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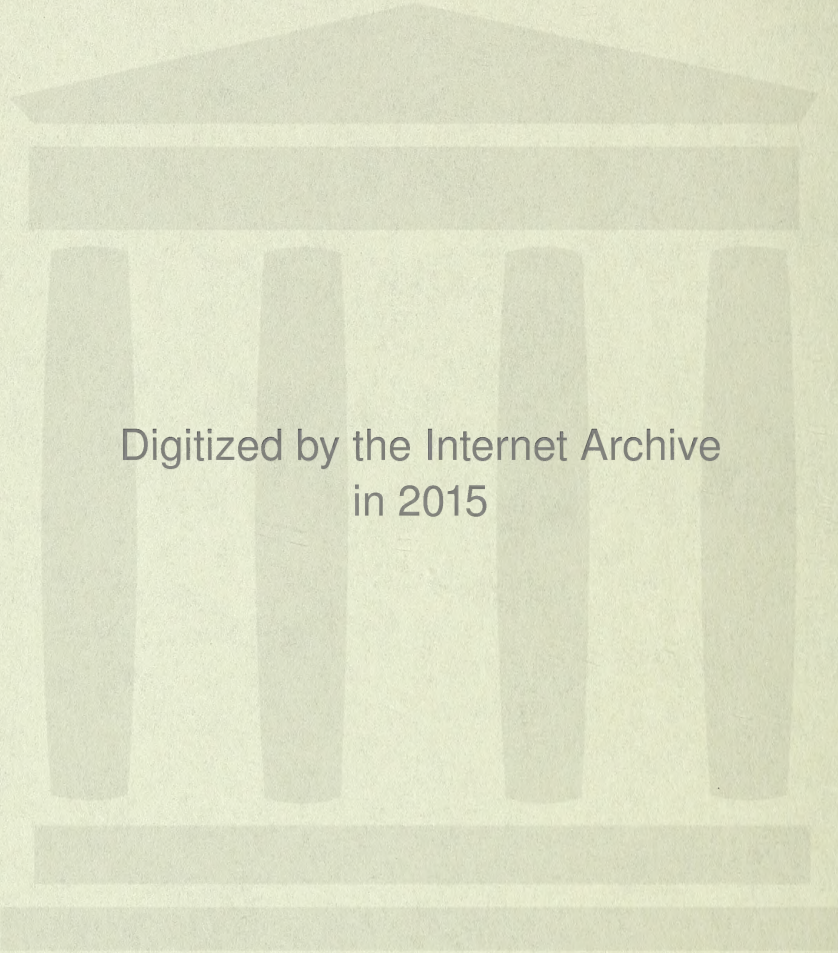


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J. Nelson



THEODORE TILTON

VS.

HENRY WARD BEECHER,

ACTION FOR CRIM. CON.

TRIED IN THE CITY COURT OF BROOKLYN,

CHIEF JUSTICE JOSEPH NEILSON, PRESIDING.

Verbatim Report by the Official Stenographer.

WITH PORTRAITS OF

Chief Justice JOSEPH NEILSON,

Ex-Judge S. D. MORRIS,

Mrs. ELIZABETH R. TILTON,

FRANCIS D. MOULTON,

Hon. ROGER A. PRYOR,

Ex-Judge WILLIAM FULLERTON, THEODORE TILTON.

—...—  
VOL. I.  
—...—

NEW YORK:

McDIVITT, CAMPBELL & CO., LAW PUBLISHERS,

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CHAMBERS, THE CITY COURT OF BROOKLYN.

BROOKLYN, February 22d, 1875.

"TILTON VS. BEECHER."

The numbers of your report have been of great use to me. The testimony is given, as in the N Y. Tribune, with substantial correctness. In thanking you for your courtesy, I beg to express my respect for your enterprise.

Very truly yours,

J. NEILSON, Ch. J.

To McDIVITT, CAMPBELL & Co., Nassau St., N. Y.



# THEODORE TILTON *AGAINST* HENRY WARD BEECHER,

IN THE  
CITY COURT OF BROOKLYN.

JOSEPH NEILSON, CHIEF JUSTICE, PRESIDING.

<i>SAMUEL D. MORRIS,</i>	{ <i>Pliff's Att'y's.</i>	<i>THOMAS G. SHEARMAN,</i>	{ <i>Def't's Att'ys.</i>
<i>THOMAS E. PEARSALL,</i>		<i>JOHN W. STERLING,</i>	
<i>ROGER A. PRYOR,</i>	{ <i>Of Counsel.</i>	<i>JOHN L. HILL,</i>	{ <i>Of Counsel.</i>
<i>WILLIAM FULLERTON,</i>		<i>JOHN K. PORTER,</i>	
<i>WILLIAM A. BEACH.</i>		<i>BENJAMIN F. TRACY,</i>	
		<i>WILLIAM M. EVARTS.</i>	

## THE JURY:

CHESTER CARPENTER, *Foreman.*

HENRY THYER,	A. R. CASE,	WILLIAM T. JEFFREY,
GEORGE HULL,	EDWARD WHELAN,	GRIFFIN B. HALSTEAD,
CHRISTOPHER FITTER,	WILLIAM H. DAVIS,	JOHN McMURN.
SAMUEL FLATE,	JOHN F. TAYLOR,	

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# THEODORE TILTON

*against*

# HENRY WARD BEECHER.

## THE SUMMONS.

**THE CITY COURT OF BROOKLYN—THEODORE TILTON, Plaintiff, against HENRY WARD BEECHER, Defendant—Summons, for Relief.**

*To the Defendant:* You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the Subscribers, at their office, No. 183 Montague street, in the city of Brooklyn, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief demanded in the complaint.

Dated August 19th, 1874.

**MORRIS & PEARSALL.**  
*Plaintiff's Attorneys.*

## MR. TILTON'S COMPLAINT.

**THE CITY COURT OF BROOKLYN—THEODORE TILTON against HENRY WARD BEECHER.**

The plaintiff, complaining of the defendant, alleges:

I.—That on the 2d day of October, 1855, in the City of Brooklyn, plaintiff intermarried with Elizabeth M. Richards, since named and known as Elizabeth R. Tilton, and that at the time of the commission of the wrongs hereinafter mentioned the plaintiff and his said wife were living together as man and wife in the said City of Brooklyn.

II.—That the defendant contriving and wilfully intending to injure the plaintiff and deprive him of the comfort, society, aid and assistance of the said Elizabeth, the wife of the plaintiff, and to alienate and destroy her affection for him, heretofore on or about the tenth day of October, 1868, and on divers other days and times after that day and before the commencement of this action, at the house of the defendant, No. 124 Columbia street, City of Brooklyn, and at the house of the plaintiff, No. 174 Livingston street, City of Brooklyn, wrongfully and wickedly and without the privity or connivance of plaintiff, debauched and carnally knew the said Elizabeth, then and ever since the wife of the plaintiff, by means whereof the affection of the said Elizabeth for the said plaintiff was wholly alienated and destroyed; and by reason of the premises the plaintiff has wholly lost the comfort, society, aid and assistance of his said wife, which during all the time aforesaid he otherwise might and ought to have had and enjoyed.

And has suffered great distress in body and mind, to the damage of the plaintiff one hundred thousand dollars.

Wherefore the plaintiff demands judgment against the defendant for the said sum of one hundred thousand dollars for the wrongs and injuries hereinbefore set forth, besides the cost of this action.

**MORRIS & PEARSALL.**  
*Plaintiff's Attorneys.*

*City of Brooklyn, County of Kings, ss:*

THEODORE TILTON, being duly sworn, says that he is the plaintiff in the foregoing entitled action; that he has read the

foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

THEODORE TILTON.

Sworn to before me, this 20th  
day of August, 1874.

GEO. W. RODERICK,  
*Notary Public,*  
Kings County.

**MR. BEECHER'S ANSWER.**  
**THE CITY COURT OF BROOKLYN—THEODORE TILTON, Plaintiff, against HENRY WARD BEECHER, Defendant—Answer.**

The defendant answers to the complaint:

I.—That each and every allegation in the said complaint contained (except that the plaintiff and Miss Elizabeth M. Richards were married on October 2d, 1855, and lived together as husband and wife up to 1874) is utterly false.

II.—That this defendant never had, at any time or at any place, any unchaste or improper relations with the wife of the plaintiff, and never attempted or sought to have any such relations.

SHEARMAN & STERLING,  
*Attorneys for Defendant.*

STATE OF NEW HAMPSHIRE, ss:  
*County of Grafton,*

HENRY WARD BEECHER, being duly sworn, says:

1. That he is the defendant herein, and resides in the City of Brooklyn, Kings County, New York, but is temporarily residing at the Twin Mountain House, Coos County, New Hampshire.
2. That he is sixty-one years of age, and his occupation is that of a clergyman.
3. That the foregoing answer is true of his own knowledge.

HENRY WARD BEECHER.

Sworn and subscribed before me,  
this 29th day of August, 1874.

HARRY BINGHAM,  
*Justice of the Peace.*

## JUDGE NEILSON STAYS PROCEEDINGS.

On the 17th day of October, 1874, Judge Neilson, Chief Justice of the City Court of Brooklyn, granted an order requiring the plaintiff to deliver to the defendant's attorneys a statement in writing of the particular times and places at which he expected or intended to prove that any acts of adultery or criminal intercourse had taken place between the defendant and wife of the plaintiff, and of the particular times and places at which he expected or intended to prove that the defendant confessed any such act of adultery or criminal intercourse, by the 22d day of October, 1874, or show cause why such Bill of Particulars should not be delivered, and why the plaintiff should not be precluded from giving evidence on the trial of



any such acts or confessions not specified in such Bill of Particulars. In the meantime the proceedings in the case were stayed by order of Judge Neilson.

#### MR. BEECHER'S AFFIDAVIT.

In connection with the motion for a Bill of Particulars, the following affidavits were submitted :

CITY OF BROOKLYN, {  
County of Kings. }

HENRY WARD BEECHER, the defendant above-named, being duly sworn, says :

I.—This is an action brought for alleged criminal conversation with the wife of the plaintiff.

II.—The complaint was served upon my attorneys on the 21st day of August, 1874, and my answer thereto was served upon the plaintiff's attorneys on the 7th day of September, 1874.

III.—The complaint specifies only one date at which any act of improper conduct on my part is alleged to have occurred, to wit : on the 10th day of October, 1868 ; and, although it alleges in general terms that such conduct was repeated on divers other days after that time, it does not mention any other specific date, nor does it mention any place, except the residence of the plaintiff and my own residence.

IV.—Since the service of the complaint and answer herein, and on or about September 18th, 1874, the plaintiff, as I am informed and believe, published a statement over his own signature, asserting that his wife and I had both confessed to him in detail specific times and places at which we had maintained improper relations with each other, which times and places, however, other than October 10th, 1868, and the Saturday following, the plaintiff carefully refrains from mentioning, but professes to have within his own knowledge.

V.—The assertion that I ever made any such confession to him is utterly false ; but I am advised by my counsel, and believe, that such a statement indicates the intention of the plaintiff to produce manufactured evidence in support of his allegation, and by means of false testimony to surprise my counsel, at the trial, with evidence which they and I cannot be prepared to meet otherwise than by my own simple denial, on the trial of this cause.

VI.—I have no knowledge, information, belief or suspicion as to the times or places (other than those specifically mentioned in the complaint and the published statement aforesaid) at which the plaintiff intends or expects to prove, or even to assert, that any improper conduct on my part took place, and as I never did, in fact, have any improper or immoral relations with his wife, I am entirely at a loss to form any surmise concerning the probable line of proof which will be adopted by the plaintiff on the trial of this cause.

VII.—I have fully and fairly stated the case in this cause to my counsel, Thomas G. Shearman, who resides at No. 81 Hicks Street, Brooklyn, and I have a good and substantial defence to this action upon the merits thereof, as I am advised by my said counsel and verily believe ; and I am further advised by my said counsel, and believe, that I cannot safely proceed to the trial of this action without receiving a statement of the particulars of the plaintiff's charge against me, and especially of the times and places at which any and every act of adultery or improper intercourse on my part is alleged to have taken place, and of the times and places at which it is to be alleged that I made any confession to the plaintiff.

HENRY WARD BEECHER.

Sworn to this 17th day of }  
October, 1874, before me. }

LUDOVIC BENNET,  
Notary Public,

In and for the State of New York.

#### MR. TILTON'S AFFIDAVIT.

CITY OF BROOKLYN, {  
County of Kings. }

THEODORE TILTON, the plaintiff in the above action, being duly sworn, declares :

I.—I published on the 18th of September last, over my own signature, a careful, candid and truthful statement, in reply to previous false and calumnious publications made against me by the Rev. Henry Ward Beecher, and by a committee composed of six of his partisans, whom he had previously instigated to give him a one-sided trial for adultery, and to acquit him in defiance of his manifest guilt, freely confessed by him to many persons.

II.—My published statement, above named, contained a recital of these facts, honestly and moderately narrated, with careful intent not to overdraw, but rather to underrate the actual extent and enormity of the crime of the said Beecher against me by the seduction of my wife and the ruin of my home, together, also, with his subsequent accumulation of base and dastardly acts, constituting his desperate defence against his original crime.

III.—The affidavit of said Beecher, in so far as it denies or impugns the truth of my aforesaid published statement, is utterly false, with intent to deceive the Court and the public.

IV.—The insinuation in the aforesaid affidavit of the said Beecher that I intend to produce "manufactured evidence" and "false testimony" in support of my charge of adultery against him is unfounded and malicious.

On the contrary, I believe, and so charge, that the real object and purport of said motion is to apprise said Beecher, in advance, of my evidence and witnesses, to the end that said evidence may be deceptively met by false and fabricated testimony on behalf of said Beecher, and that said witnesses may be tampered with or eloiigned. My belief that such is the crafty design of my opponents is based on the fact that the greater part of the evidence which has been heretofore advanced in defence of said Beecher, has been false and fabricated ; for example, the palpable falsifying of his own church records, by his recent Committee of Investigation, as pointed out in my published statement ; also, by a false and calumnious charge against Francis D. Moulton, F. B. Carpenter and myself, as blackmailers and conspirators ; also, by a pretended validity given to the silly fictions of the girl Bessie ; also, by inciting Mrs. Elizabeth R. Tilton to testify falsely that I had subjected her to imprisonment under lock and key, and had, in an inclement winter, deprived her of fire and food ; also, by the false pretence that I used the said Beecher as an instrument to extort \$7,000 from Henry C. Bowen ; also, by the despicable attempt to connect me criminally with certain honorable women, both living and dead ; also, by variously misrepresenting me to the public in false lights, for example, sometimes as a forger, and at other times as a lunatic ; also, by repeated false oaths of denial by the said Beecher to the true charge which I have made against him, of sexual commerce with Mrs. Elizabeth R. Tilton, carrying his perjury to the extent of procuring against me, on his own oath, a criminal indictment by a Grand Jury, whereas he himself was and is the real criminal.

V.—I further believe, and so charge, that the said Beecher is maintained and upheld in his present determination to evade, by false testimony, the true charge of adultery, through the strong support of powerful friends, some of whom have a direct pecuniary interest in maintaining his name before the public at its former marketable value ; and I am informed, and believe, that certain of these persons declare their purpose to sustain the said Beecher at all hazards, whether innocent or guilty.

VI.—I further believe, and so charge, that the said Beecher and his interested champions in Plymouth Church, have plentiful and opulent means at their disposal to purchase and procure false evidence in the coming trial, and intend so to do.

VII.—I further believe, and so charge, that the said Beecher's



percent demand for a bill of particulars, unusual in such actions (as I am informed), and in this instance wholly unwarranted by justice, and purposely intended for a perversion of the truth, is further designed by the defendant to procure the postponement of a trial which the ends of justice, and also the universal public opinion, demand shall be pressed to issue without technical delays.

VIII.—I reply, finally and specifically, to the said Beecher's demand for a bill of the particular times and places at which he committed his adulteries, that these times and places are already within his own knowledge.

THEO. TILTON.

Sworn to before me, this 24th }  
day of October, 1874. }

RUFUS M. WILLIAMS,  
Notary Public.

### THE BILL OF PARTICULARS DENIED.

The motion for a Bill of Particulars was argued at a special term of the City Court of Brooklyn, October 30th, 1874, before Chief Justice Neilson, Messrs. Shearman and Tracy appearing for the motion and Ex-Judge S. D. Morris against it. Judge Neilson denied the motion without costs. His opinion in the case was as follows:

The complaint charges that the defendant committed the wrongful acts stated "on or about the 10th day of October, 1868, and on divers other days and times after that day and before the commencement of this action, at the house of the defendant, No. 124 Columbia street, City of Brooklyn, and at the house of the plaintiff, No. 174 Livingston street," in said city.

An answer, denying the charges, has been put in, and the issue of fact thus joined noticed for trial. An application is now made for an order requiring the plaintiff to deliver to the defendant's attorney a statement in writing of the times and places at which he expects and intends to prove that the defendant committed and confessed any such acts.

As to the places where the plaintiff may expect or intend to prove that the acts were committed, the complaint is specific; the houses and streets are designated. The information on that point, sought by this application, has been fully given.

As to the supposed confessions the complaint is silent, and properly so. Under our system of pleadings the facts are to be set forth, not the evidence of those facts. This distinction must be observed; it is expressly enjoined by the Code; has been enforced by an unbroken chain of decisions. When, therefore, the plaintiff's case is stated in the complaint, the claim or wrong being one of which the law takes cognizance, the pleader is not allowed to add averments disclosing the oral proof by which he expects or intends to support or establish his case on the trial.

But it is shown by affidavits that the plaintiff, who could not have alleged in his complaint that such confessions had been made, and might have been prudently reticent on the subject, has stated in a newspaper article that such proof existed. In view of that, the defendant's counsel claims that the plaintiff should be required to state when and where these confessions, if any, were made. The question is not simply whether it would be well for the defendant to have that additional information, but whether the Court has the power to make such a requisition. I am satisfied that we have not the power. It would be a dangerous innovation, an anomaly in practice, if every defendant who learns that there may be an attempt to prove admissions could, by motion before the Court, compel further disclosures. So far as I am advised, such an order has never been granted.

The only remaining ground of the application is as to the times when the plaintiff expects and intends to prove that the acts took place.

The complaint has it thus: "On or about the 10th day of October, 1868, and on divers other days and times after that day, &c." That is good and correct pleading. Chitty gives that form for this action, and in a note, it is said, "the injury may be stated to have been committed on divers days and times," &c. (2 Chitty Pl., 642.) But if any question could be raised in respect to that form, the defendant should have applied to have the complaint made more definite and certain.

In a case of this precise nature the complaint did not specify the places, not even the county, and Judge Reynolds, at Special Term, granted such an application before answer. That is the practice prescribed by the Code.

Under the common law system of pleading, especially where the common counts were used, a defendant might be taken by surprise as to matters touching which he had the right to be informed, and some remedial practice for the suitor's protection was necessary. Courts of equity, in the exercise of inherent powers, inaugurated a practice of the nature now invoked, and, under legislative directions, the courts of law acquired the right to order a discovery and inspection of papers, but with special limitations (14 and 15 Vict., c. 99, § 6; Wigram on Discovery, 19; 3 Rev. St., 5th ed., 292), and to require bills of particulars in certain cases, especially as to the items of an account (Code, § 158.)

The elaborate brief handed in by the learned counsel for the defendant has a large collection of the cases in which such power has been exercised, with interesting analogies and illustrations. But none of the cases apply to the legal question involved.

In his treatise on practice, Mr. Shearman says:

"As a general rule, a bill of particulars will not be ordered in an action for a tort. (See *Pyle v. Stephens*, 6 Mees. and W., 813; *Stannard v. Ullithorne*, 3 Bing., N. C., 328; *Snelling v. Chennels*, 5 Dowl., P. C., 80.) Thus it will not be ordered in an action for injuries causing death (*Murphy v. Kipp*, 1 Duer, 659), nor usually in any action for personal injuries (*Semble*, *Derry v. Lloyd*, 1 Chit. Rep., 729, per Best, J.)."

The learned writer proceeds to state the reason why such bills are not granted in an action for tort, to wit: that the cause of action must almost always appear with sufficient distinctness in the complaint to enable the defendant to prepare his defense, and refers to 4 Cowen R., 54, where a bill of particulars was ordered in an action for the conversion of personal property, "as avoiding great detail in the pleading," and to 5 Dowl., P. C., 80, and 6 Exch., 696, to the point that, in actions of tort, the application should be accompanied with an affidavit that the defendant does not know what the plaintiff is suing for."

This last proposition accords with several late cases in which it has been held that such bills will not be furnished if the defendant already has, or from the nature of the case, must have the best or fullest knowledge of the facts. Indeed, there are many exceptions (7 M. W., 236; 6 C. B., N. S., 673; 8 How. Pr. R., 288), and as to the general theory, a late learned and prudent Judge has said: "The law has always considered sacred the rights of both parties to keep secret their preparations and means of attack and defence." (1 Abb. Pr., N. S., 253.) As indicating the theory that the right of discovery at law has been regarded as matter proper for legislative direction, rather than for such direction as the Court, in the exercise of its supposed inherent powers, might in each case choose to grant, our statutes as to compelling discovery in respect to betting and gaming (2 R. S., 926) and illegal brokerage (2 R. S., 979), usurious transactions (3 R. S., 73), and in respect to attorneys (3 R. S., 478, 479) might well be referred to.

Moreover, as rules of practice must be general, not changed materially to conform to particular cases, a plaintiff may so shape his case as to meet exigencies, as where witnesses are hostile and refuse to disclose the facts until compelled to do so on the trial.

But, as I have said, the question is as to the power of the Court, a power to be exercised with special reference to the



system of practice established by the Legislature. The Code, in creating a new system of procedure, has prescribed the manner in which a cause of action shall be stated in the complaint, and how a pleading, if defective, may be perfected. It gives to a defendant not satisfied with the frame or terms of the complaint, remedies much more full and adequate than given under the old system. He may move to have the complaint made more definite and certain, and where the claim can be itemized, may also have a bill of particulars. To all this the Code adds the right to examine the adversary on oath before trial, and even at the trial.

But the Code allows a bill of particulars of the claim. If the wrong be the conversation of personal property, the enumeration or description of it would be as to the particulars of the claim. But an action of this peculiar class, like that for assault and battery, is sufficiently stated and described in the general allegation necessarily contained in the complaint. Extraneous incidents there may be, enhancing or diminishing the grievance, but nothing further could be said as to the claim itself. When we are treating of claims in respect to property, or contracts, or accounts, a different rule applies.

In this case the right to move that the complaint be made more definite and certain has been waived. In several cases the Courts have held that such waiver was a confession that the pleading was sufficient. Such motion was a simple and the appropriate remedy, and this application cannot be accepted, though intended as a substitute. But the question is not of much moment to the defendant, as the information to which he could have been entitled may yet be obtained by examining the plaintiff before the trial.

I think that the practice established by the Code should be followed, as thus and only thus can certainty and consistency be obtained; and that an attempt by the Court to evade that practice and substitute other modes of procedure would be unwise, if not reprehensible.

The application is denied, but without cost.

J. NEILSON,  
J. C. C.

#### THE DEFENDANT APPEALS TO THE GENERAL TERM.

On the next day the defendant's attorneys appealed from this order of Judge Neilson to the General Term of the City Court. The appeal was heard in the General Term, October 19th, 1874, by Judges Reynolds and McCue, and after argument by Mr. Shearman for the defendant, and Messrs. Morris and Beach for the plaintiff, the order denying the Bill of Particulars was affirmed without costs, Judge Reynolds writing the opinion. A dissenting opinion was written by Judge McCue.

#### OPINION OF JUDGE REYNOLDS.

The defendant, upon this appeal, asks that the plaintiff be compelled to specify the particular times "at which he expects or intends to prove any acts of adultery," and that the plaintiff be precluded from giving evidence upon the trial of any acts not so specified. The order to show cause asked for a like specification of places. And also of the particular times and places at which alleged confessions were made.

Upon the argument before us, however, it was not claimed that the places were not sufficiently specified, and that part of the order relating to confessions was expressly waived. Even if it had not been so waived, it would obviously be beyond the province of the Court to make any such requisition.

The question before us on this appeal then is, ought the plaintiff, upon the trial, to be confined to those particular acts, the exact date of which he may be able to fix in advance; for it would be idle to compel him to name the precise time of any alleged acts, except for the purpose of excluding all others from his claim. That is the very object of the motion.

The complaint alleges the wrongful acts to have been committed "on or about the 10th day of October, 1868, and on divers other days and times after that day, and before the commencement of this action," specifying as the places two houses in the city of Brooklyn. It is admitted that this is sufficiently definite and certain for the purpose of a pleading. If not, the remedy was by motion, to be made before the service of the answer. I understand this application to be based upon the ground that the Court has power to order a bill of particulars, as incident to the general administration of justice, as well as by § 158 of the Code.

Without discussing at length and separately the question whether the Court possesses the power to restrict the plaintiff by a bill of particulars in such an action as this, I propose to rest my conclusion mainly upon the ground that this is not a proper case for the exercise of such power.

The defendant is entitled, as matter of right, to a copy of the plaintiff's account when a demand for it is applicable to the nature of the case; but the "bill of particulars of the claim" which the Court may order "in all cases," is to be required only in the exercise of a sound discretion. Upon examining the authorities cited by the defendant's counsel, it will be found that the Court in each instance has evidently had reference to the particular circumstances of the case, and the supposed ability of the party to give the information asked for.

The decisions which are relied upon as having the most direct bearing upon this application, are those cited from the English Divorce Court, where the petition for divorce is joined with an action for damages against the alleged paramour.

In these cases it seems to be common to order particulars to be given. It is worth while to observe the manner in which the cause of action is stated in the petition (corresponding to our complaint) under their practice. Take, for instance, the cases cited upon the very able brief of defendant's counsel. In *Hunt vs. Hunt and Duke*, 2 Swabey & Tristram, the petitioner was charged, by way of recrimination, with having committed adultery with three persons named, without stating time or place. In *Codrington vs. Codrington and Anderson*, 3 Swa. & Tris., the charge was that the respondent had committed adultery on divers occasions since April, 1859, with divers persons. Particulars were ordered, and the petitioner then alleged frequent acts of guilt between 1859 and 1862, with a person named at Malta, and during a journey to Switzerland, Savoy, Sardinia and Italy. Further particulars were ordered, it appearing that the information on which the charge was founded was contained in a diary and certain letters of the respondent.

In another case, *Winscom vs. Winscom & Plowden*, 3 Swa. & Tris., the allegation was of adultery in or about the year 1853, at Jubulpoor, with some man other than the petitioner. Particulars were demanded, and the order seems to have been satisfied by stating the offenses as committed with Edward Clark, at Jubulpoor, in February or March, 1853. In a Massachusetts case, *Adams vs. Adams*, 16 Pick., 254, the libel (or complaint) charged that the defendant had committed various acts of adultery, at various times, with persons unknown, during a period of eight years. It would be difficult to imagine a charge much more general and indefinite than this.

Under a system which tolerates such pleading in an action for divorce, as is instanced by the foregoing references, the complaint must of course be supplemented by a statement of particulars.

In our State the complaining party in actions for divorce has always been compelled, by the pleading, to specify the circumstances of the offence alleged, as to time and place, with as great particularity as under the system of orders adopted elsewhere. We are not referred to a divorce case in this State where an order for particulars was applied for or made. I think, too, the learned counsel was mistaken in supposing that the settling of issues in a divorce suit ever served the purpose which is sought to be attained by an order. The issues were framed upon the pleadings; those were required to allege the offence with

reasonable certainty of time and place, and if the charge was too vague, the defect was not remedied by supplying an issue containing the particulars, but the issue would not be awarded. [Codd vs. Codd, 2 John. Ch., 224; Wood vs. Wood, 2 Paige, 103.] The practice of ordering particulars in such cases seems never to have obtained here.

Of course, bills of particulars may be ordered in certain cases and sometimes in actions of tort. We have been referred to two cases, decided by our Supreme Court. *Humphrey vs. Cotteyou*, 4 Cow., 54, was an action of trover for the conversion of a quantity of timber. A bill of particulars was ordered, and the plaintiff delivered an account, specifying so many sticks of different kinds, without giving dates or mentioning any time within which the several items arose. The Court say the date of the items should be given with as much particularity as possible. If the day cannot be stated, then the month or year. That was a case where the claim was susceptible of being resolved into particulars, or itemized, with approximate dates, as much so as an account for goods sold. The difference between such a case and this has been sufficiently discussed by Chief Justice Neilson in the Opinion at Special Term.

The other case was an action for dower, *Vischer vs. Conant*, 4 Cow., 396. "The count was in the (then) usual general form, without showing any land in certain." The Court say the proper course was the same as in ejectment, where the declaration was equally general, that is, to ascertain, by a bill of particulars for what particular land the plaintiff was proceeding.

"This proceeding to obtain a bill of particulars seems applicable to all actions in which the plaintiff declares generally without specifying particularly his cause of action."

Surely, an order requiring the plaintiff to specify what land he is claiming in a suit, does not go far as a precedent, for requiring a party to state the exact date of a secret wrongful act, alleged to have been committed against him.

The case of *Early vs. Smith*, cited from the Appendix to 12 Irish Com. Law R., comes much nearer to the matter before us.

The action was for slander, and the complaint set out the words spoken without stating time or place. The Court made an order which was modified on appeal. The prevailing opinions say, "We do not compel the plaintiff to state the specific times at which he charges the words to have been spoken, and bind him by them, or the names of the parties to whom the words were spoken, but the occasions on which the words were spoken."

One of the Judges says he had concluded to go so far, not without difficulty, and another dissented; but the decision plainly falls short of the point attempted to be reached in this case. The Court refused to bind the plaintiff to specific times.

There is a vast difference, too, between the nature of that section and of this.

It was of the essence of slander, that the words had been spoken in the presence and hearing of other people, and the plaintiff might well be presumed to have the means, easily accessible, of fixing the occasion, and with some certainty, the time, of the wrong. No such presumption naturally arises here; indeed, the contrary, to some extent appears.

So far as civil actions are concerned, the great particularity in stating time and place, in suits for divorce, seems, with us, to be peculiar to that action. Our attention has not been directed to any case in this State, and I am not at this moment aware of any, holding in an action for damages for a wrong committed, when the time of the commission of the act is not material to constitute the cause of action, that the particular time must be stated, and proved according to the allegation.

The dissenting opinion in *Early v. Smith* very forcibly says: "Hitherto the law, although it has required the plaintiff, in point of form, to allege time and place for the charge which he makes, has been perfectly settled that he is not tied up as to his proof, either as to time or place. It has been no objection that at the trial he proves the slander at one place, though he has laid

it at another, or that he proves it at one time, though he has laid it at another."

This is true as to other torts, including the offences charged in this complaint, as well as in reference to an action for slander. I quote again from the same opinion: "It is said, Oh, it is a great hardship to the defendant to go to trial without knowing the precise times and places on which the plaintiff means to rely. But that is a hardship to which plaintiffs and defendants have been subject for hundreds of years—for as long as we have records of law."

I think such is the state of the law with us to-day; unavoidably so, and that it should be inconsistent with well settled and reasonable rules, to "tie up" the plaintiff, in such an action as this, to any particular date or dates, to be stated in advance.

With all the uncertainties of human testimony no man can foresee the chances and accidents of a trial; and, as to immaterial circumstances, great latitude should be allowed.

This will be still more apparent from a consideration of the nature of the proof upon which, so far as disclosed, this plaintiff must mainly rely.

The moving affidavits make extracts from a published statement of the plaintiff, in which he speaks of confessions alleged to have been made to him by his wife and by the defendant.

It is not at present apparent how *her* confession can be made use of as evidence on the trial; as to those of the defendant, it does not appear from plaintiff's statement, as quoted, that such confessions furnished him with the information as to dates, which would enable him to comply with the order sought for, nor is it quite clear that a plaintiff in such an action ought to be compelled to rest his case upon the accuracy or reliability of data so obtained, even if the particulars were given to him.

Now, suppose the plaintiff came into court and upon the trial swear to confessions of guilt, as made to him by defendant, broad enough to sustain the complaint, if credited by the jury; suppose he succeeds in producing other witnesses who shall swear to similar confessions and to circumstances pointing in the same direction; and also introduces papers, written and signed by the defendant, which are claimed by plaintiff to be substantially confessions of the offence charged; but that any array of proof of this sort should fail to point out specific days or times of the alleged wrongs, what would be the consequence should the jury be satisfied, upon such evidence, of the defendant's guilt?

In accordance with the general rules applicable to the trial of issues—rules which I conceive to be fair and just—the plaintiff would in that case be entitled to a verdict. He would have made out (supposing the jury to have found as stated) the substance of his allegations and it would matter not whether the wrongs were committed on this day or that, within the general period covered by the complaint. But if we should make the order which is now asked for, the defendant might, in the first place, with great plausibility object to all proof which does not point to some specific time, and in the next demand a verdict of acquittal, even if the jury should believe the evidence against him, because he had not been shown to have committed the offences at the particular times to which the plaintiff had been confined by the order and the bill of particulars.

If this result would not follow upon such a state of facts, I see no object in asking for the order; and if such a result should follow, it seems to me it would be a reproach upon the administration of justice.

I think the parties can have a perfectly fair trial of the issues in the ordinary way, and I am therefore in favor of affirming the order made at Special Term, but without costs.

GEO. G. REYNOLDS, *Judge*.

#### OPINION OF JUDGE McCUE.

Appeal from an order made at Special Term, denying the defendant's application to compel the plaintiff to furnish a statement or bill of particulars of the times and places



when the several acts of adultery charged in the complaint were committed.

The action is for *crim. con.* The complaint alleges that the adultery was committed at the house of the plaintiff, also at the house of the defendant, both situate in the City of Brooklyn, "on or about the 10th day of October, 1863, and on divers other days and times after that day and before the commencement of this action." The answer is a full denial of each and every act of adultery.

The defendant's application was to compel the plaintiff to show cause why he should not deliver to the defendant's attorneys a statement, in writing, of the particular times and places at which he expects or intends to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff, and of the particular times and places at which he expects or intends to prove that the defendant confessed any such acts of adultery, or criminal intercourse, or be precluded from giving evidence upon the trial of any such act or confessions not specified in such bill of particulars.

Before passing to the examination of the questions presented on this appal, we think it proper to notice two objections raised to the defendant's application, since the early disposition of them will very much simplify our labor.

The objections referred to are: *1st*, That the defendant desires a bill of particulars of the confessions made by plaintiff's wife, which it is claimed could not be introduced against the defendant; and *2nd*, That the claim of the plaintiff "is for the loss of the affections, comforts, society and assistance of his wife; and that if the defendant had accomplished this without seduction, his liability would have been the same." (See point 14, respondent's printed points).

An examination of the order to show cause disposes of the first objection; the bill of particulars desired does not call for the confessions of the wife, only for those made by the defendant himself.

The second objection is not well taken. The loss of the affection, comfort, society and assistance of the wife are elements of damage, it is true, but the plaintiff's right of action rests alone upon the fact of the seduction of the wife, and if the plaintiff fails to prove that fact, notwithstanding that he may have lost her affections, &c., he must fail in this action. A special action on the case might give him relief, but, in this action, failing to prove that the defendant debauched the plaintiff's wife, the plaintiff has no standing in Court. It would not, therefore, follow, as stated in the 14th point referred to, that, if the defendant was entitled to have the bill of particulars applied for, he would be equally entitled to have the items of proofs, proposed to be introduced on the trial, touching the defendant's frequent visits, his presents, and the various arts by which the defendant won the affections of the plaintiff's wife.

These objections disposed of, we propose to consider the single question presented on this appeal, viz.:

Has this Court power, after issue joined in an action of *crim. con.*, to order a bill of particulars "of the divers other days and times" after the one particular day named in the complaint when the criminal conversation is claimed to have taken place, and of the particular guilty acts which, it is claimed, the defendant has confessed?

No objection is raised to the power of this Court at General Term to review the order appealed from. The order is sought to be sustained on the grounds—*First*:

That Section 153 of the Code, which provides for the delivery to either party on demand, or on the order of the Court, if "the items of an account" set up in a pleading, or "a bill of particulars of the claim" of either party, does not apply in the case of a claim such as that which forms the subject of this action; and, *Second*:

That the defendant's application should have been made under Section 160 of the Code: "When the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the Court may require the

pleading to be made definite and certain by amendment," and that, having omitted to make the application before answering, the defendant has thereby accepted the complaint as sufficient, and has waived the right to require any amendment of the complaint.

I understand the defendant's application to have been denied by his Honor the Chief Judge, not because there were no merits in the application, but because "of want of power to grant the same, as well as for other grounds stated" in the opinion of the Court. The main consideration suggested by the learned Chief Judge for refusing the application seems based upon the assumption, that if any question could be raised in relation to the form of the complaint, the defendant should have applied to have the complaint made more definite and certain; and that to compel the plaintiff to give the particulars called for, is in effect to compel him to disclose the evidence upon which the plaintiff relies to establish his cause of action on the trial.

With great respect we think this position erroneous.

The complaint as a pleading is good, and follows the established forms. There is no indefiniteness or uncertainty in the nature of the charge. It is distinctly alleged that the defendant debauched the plaintiff's wife. This act is declared to have been committed on the 10th day of October, 1863, thus bringing it within the Statute of Limitations; except for this purpose the allegation of time would have been immaterial. Proof of the adultery, therefore, on or about the date particularly alleged would establish the right of the plaintiff to recover.

That fact established, the plaintiff has a perfect cause of action, and the other matters alleged in the complaint, as to the loss of the wife's affections, society and services, enter into the cause only as bearing upon the question of damages.

The defendant could not obtain the information he asks, under this section, because it is only when the charge which he is called on to meet is not apparent in the complaint, that the Court has power to make that pleading more definite and certain.

It matters not whether the defendant did or did not debauch the plaintiff's wife at divers other days and times between the 10th day of October, 1863, and the time of the commencement of the action.

If guilty on the one day alleged, he is guilty of the wrong complained of, and the plaintiff is entitled to recover damages.

Even if the plaintiff should fail to establish the commission of an act of adultery on the 10th day of October, 1863, the charge is still definite and distinct against him; and if the plaintiff can establish the commission of a single act of criminal conversation between the said 10th day of October, 1863, and the time of the commencement of this action, his cause of action is fully established.

The Court, therefore, can give him no relief under section 160, because the nature of the charge against him is apparent on the face of the complaint, and the time immaterial, except to the defendant, to enable him to prepare for trial.

It does not follow that because the plaintiff is compelled to designate, with some reasonable particularity, those other days and times, that he is necessarily obliged to disclose the evidence by which his cause of action is to be sustained, and thus expose his preparation and means of attack. On the contrary, let us assume that one of these other days and times is the 10th day of October, 1863, and is so assigned by the plaintiff. What light is furnished to the defendant by which he can foresee, in any way, the proof by which the plaintiff, on the trial, proposes to establish the defendant's guilt?

The plaintiff has now undoubtedly the proofs within his reach by which he hopes to establish the fact, but the names of the witnesses who saw the guilty act committed, or the circumstantial evidence by which the plaintiff, in the absence of direct proof, will endeavor to establish the defendant's guilt, are not disclosed. How can it be said that to give this date, either absolutely or with reasonable approximation, affords the defendant any opportunity to tamper with or elude an unwilling wit-

ness, or enables him to manufacture testimony to meet facts and circumstances known only to the plaintiff, and not disclosed under the order applied for, and against which it seems to me impossible that he should be able to manufacture any available testimony?

I have dwelt thus at length upon this branch of the case because the decision of the Court below seems to rest mainly upon the point that the defendant had a full and ample remedy under section 160, which he has voluntarily abandoned, and that the application of the defendant called for the disclosure of the evidence upon which the plaintiff relies to establish his claim for damages.

I do not concur with the learned Chief Judge, "that the question is not of much moment to the defendant, as the information to which he could have been entitled" (that is, under Section 160) "may yet be obtained by examining the plaintiff before the trial."

Undoubtedly the plaintiff might be examined before trial, but it is difficult to imagine any line of examination, which would be permissible, which would give the defendant any information as to the days and times on which it is proposed to prove any guilty acts between the defendant and the plaintiff's wife.

If we assume, for example, as we probably should, that the plaintiff is innocent of any collusion with the alleged guilty parties; that the defendant wrongfully and wickedly, and without his privity or consent, committed this great wrong against him, and that to make out the case he relies upon statements made to him by parties who themselves have witnessed the guilty acts, or upon circumstantial evidence, or upon both, can the plaintiff be compelled to disclose either these statements or these circumstances? The statements of other parties are incompetent as evidence. The witnesses must be produced and examined upon the trial. We submit, therefore, that the examination of the plaintiff before trial does not give him the particulars he desires.

It is, however, of vital importance to the defendant that he should know, in advance of the trial, with reasonable particularity, when it is claimed that he has committed any wrong against the plaintiff, *non constat*, but that if advised of the times and occasions, he might be able to establish that he was absent from the city when it is alleged the adultery was committed, or that, because of some other facts or circumstances, the charge is equally untrue.

The plaintiff was undoubtedly prepared, at the time his action was commenced, to bring forward the necessary proofs; the complaint is sworn to, and we must assume, for the present purpose, that the plaintiff believes the matters alleged by him to be true, and that this belief is based upon facts, circumstances and information in his possession, and they ought to be very full and clear to warrant the grave charges therein made.

The answer is verified, and, as before observed, contains a full and unequivocal denial of the charges made in the complaint. We have no right to presume the defendant guilty; the burden of proof rests upon the plaintiff. The defendant may not be put upon his defense until the plaintiff has established, at least, a *prima facie* case against him, and it is therefore begging the whole question to say that the defendant, if guilty, knows, of course, all the facts which can possibly be introduced against him.

We have no right to presume that either party will attempt the manufacture of false testimony, but certainly the opportunity to do so is as free to the plaintiff as to the defendant.

It is no injustice, therefore, to ask the plaintiff to designate the times when the acts of which he complains were committed. It cannot in any way disclose his line of attack. It is fair, to the defendant, that he should be pointed with some degree of certainty to the times and occasions to enable him to meet these charges fairly. I am satisfied that this course, and this course alone, will aid the cause of justice and lead to the ascertainment of the truth.

Secondly, as to the power of the Court to grant the order. The authorities cited by the learned counsel for the defendant leave, I think, no room to doubt that in England, and in some of our sister States, the practice is well established to the full extent claimed. It is insisted, however, that this practice has never prevailed in this State, and that the only powers possessed by our courts are under Sections 158 and 160 of the Code. I have already endeavored to show that Section 160 has no application.

The first paragraph of Section 158, referring to the items of an account, clearly refers to an account stated, and has no application to the statement which the defendant seeks. (*Johnson vs. Mallory*, 2 Rob., 681.)

The concluding portion of the section has, however, a very important bearing upon the question under review.

It was undoubtedly the object of the Code to simplify the practice and proceeding in the courts of our State, and to the extent, and in the cases in which the Code undertook to lay down rules and regulations, all other statutory provisions inconsistent therewith were repealed (Sec. 468); but the rules and practice of the courts in civil actions, which were not inconsistent with the Code, were specially declared to be in force, subject to the power of the respective courts to modify and alter the same (Sec. 469).

It is declared that the distinction between legal and equitable remedies should no longer continue, and that a uniform course of proceeding should apply in all cases.

As originally framed, Sec. 158 bore this heading: "How to state an account in a pleading," and provided only for furnishing of the items of an account therein alleged. The title, so to speak, of the section, clearly indicated and limited its office. In 1851, the section was amended by providing for the delivery of a further account when the one delivered is defective, and further provided, "and the Court may in all cases order a bill of particulars of the claim of either party to be furnished."

It is evident that the Legislature meant, in this one section, to simplify and condense in the shortest possible form, but with the most enlarged application, such rules of practice as in its judgment were best calculated to bring about a furtherance of justice; and to the end that a party to the action, plaintiff as well as defendant, might be fully apprised of the full and particular claim made against him, the courts were authorized in all cases to order a bill of particulars of the claims of either party to be furnished. This provision does not apply to the nature of the charge, but rather to its extent. The precise nature of the charge, as already seen, is covered by Section 158, as well as by Section 142, which specifies that the complaint shall contain a plain and concise statement of the facts constituting the cause of action.

The charge is fully stated when the complaint alleges that the defendant debauched the plaintiff's wife, but the plaintiff's claim is that the defendant not only committed this act on one occasion, to wit: October 10, 1868, but on divers other days and times. It certainly will not be contended that the word claim can have any reference to the items of damage.

Under Section 158, then, we are of opinion that this Court has power to order the plaintiff to furnish such further particulars as the circumstances of the case require.

I have not been able to find an adjudicated case in our reports where such particulars have been ordered in a civil action, but the practice is not an unfamiliar one in criminal cases, even in our State, and in actions for divorce before the Code.

See *Lambert vs. The People*, 9 Cow., 586. Senator Spencer, who delivered the opinion of the Court, referring to the rule in criminal cases that the indictment must not only contain a description of the crime, but also a statement of the facts by which it is constituted, so as to identify the accusation, and to the rule in indictments for barratry, requiring the prosecutor to furnish a bill of particulars which should specify the particular instances, says: "This simple and plain rule is so agreeable to common sense and common justice, that it needs not any authority to support it."



In the case of *Wood vs. Wood*, an action for divorce, 2 Paige, 113, the Chancellor held "that the only safe and prudent course is to require the charge, whether of crimination or recrimination, to be stated in the pleadings, and in the issues, in such a manner that the adverse party may be prepared to meet it on the trial," and that "neither party has a right to make such a charge against the other, on mere suspicion, relying upon being able to fish up testimony before the trial to support the allegation."

In the case of *Early vs. Smith*, 12 Irish C. L., XXXV., which was an action of slander, the defendant applied to the court for an order compelling the plaintiff to furnish the names, descriptions and addresses of the persons in whose presence the slanderous words were spoken, as well as the time when and the places where they were spoken.

The application seemed a novel one, no precedent for such an order was cited; but the court, after full examination, granted the order in a modified form, "though for the first time applied for."

It was claimed in that case, as it is in this, that such an order would enable the defendant to tamper with the plaintiff's witnesses, to which the court replied:

"That is an objection to which we should not yield; it may be raised to almost every application for a bill of particulars. The object of this application is to enable the defendant to go down to trial, knowing the case which he has to meet, and to prevent him from being taken by surprise."

The court directed the plaintiff to furnish a statement of the occasions on which the words were spoken, but not of the names descriptions and addresses of the persons present.

The power of the court under Section 158 is without limitation. The court may in all cases order a bill of particulars of the claim of either party to be furnished. This language is broad enough to cover this case, and the reason for the rule, which has obtained in our State in criminal actions and actions for divorce, applies with equal force to an action for *crim. con.* We are justified in saying that it applies with greater force in the case at bar, for the effect of a verdict against the defendant is practically to stamp, as an adulteress, a person not a party to the action, and therefore unable to make any defense in court.

We think the effect of this section is to incorporate into our practice the most liberal rules which have prevailed in other countries and States, which recognize, with us, the common law, in so far as such rules tend to bring about the more perfect administration of justice.

To recapitulate the conclusions to which we have come:

*First*—The precise nature of the charge being apparent in the complaint, the defendant could not obtain the particulars sought under the provisions of Section 160.

*Second*—The court below had power, under Section 158, to order the particulars asked for by the defendant, to the extent of compelling the plaintiff to designate with all possible particularity the times and occasions when the guilty acts were committed, whether the plaintiff was possessed of the information from the confessions of the defendant or otherwise.

*Third*—That the discretion given to the court to order such bill of particulars is a legal discretion to be exercised according to the well-established rules and practice of the court, and

*Lastly*—That the order appealed from should be reversed, without costs, however.

Dated, November 18, 1874.

A. McCUE,

Judge C. C. B.

## APPEAL TO THE COURT OF APPEALS.

From this decision of the General Term the defendants appealed to the Court of Appeals, which having heard the arguments in the case on the 1st of December, 1874, on the 7th of

December, 1874, rendered a decision reversing that of the General Term of the City Court, in the following opinion:

### OPINION OF THE COURT OF APPEALS.

THEODORE TILTON, *Respondent*, vs. HENRY WARD BEECHER, *Appellant*.—William M. EVARTS for Appellant; Roger A. PRYOR, for Respondent. Rapallo, J.

The only question arising upon the present appeal which is reviewable in this court, is whether or not the court below had power to grant the application of the defendant. If it possessed that power, and, under the mistaken impression that the power did not exist, denied the application on that ground, we have jurisdiction, and it is our duty to correct that error of law, and remit the case to the court below, with a direction that the motion be heard at Special Term, on the merits. (*People vs. New-York Central Railroad Company*, 29 New York, 418; *Brown vs. Brown*, Court of Appeals, November 1874; not reported.) This is the extent to which we interfere with orders made upon applications which do not rest upon strict legal right, but involve an exercise of discretion on the part of the courts below. It is not contended on the part of the appellant, and it would have been useless to contend, that the present application was founded upon legal right, or that it did not rest in the discretion of the court, nor that if the order appealed from was the result of fair exercise of that discretion we should be asked to review it. The ground of the appeal is that the Judge to whom the application was originally made at Special Term decided that he had no power to grant the relief sought; that he erroneously held that such relief could have been applied for under section 160 of the Code of Procedure, and could be obtained by no other proceeding, and that the defendant is entitled to have this error of law corrected, and his application duly considered without being embarrassed by the legal difficulties supposed to stand in the way.

The first point for our consideration is whether in fact the case was disposed of in the court below on the question of power. If it was we are then called upon to decide whether or not the power existed, and if we find that it did, the defendant is entitled to the unembarrassed exercise of the discretion of the court in which his cause is pending upon the question whether or not justice demands that his application be granted.

The best evidence on the first point is the order of the court denying the defendant's motion. This order recites, among other things, that an order had before been granted requiring the plaintiff to show cause why he should not deliver to the defendant's attorney "a statement in writing of the particular times and places at which he expects or intends to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff." It denies the motion, on the ground that the court has no power to grant the same, and on other grounds stated. If the words "and on the other grounds stated," had been omitted, it is very clear that the order would conclusively establish that the motion was denied solely on the ground of a supposed want of power to grant it. What qualification, then, was intended for the insertion of these words? We must suppose that the learned Judge referred to the grounds stated by himself in the opinion which he delivered contemporaneously with the order, and in which he set forth the reasons for his decision. Any other supposition would be unreasonable. This opinion presents with much force the reasons for holding that he had no power to grant the motion. But in no part of it does he say that he has exercised his discretion as to the merits of the application, and determined that it should be denied upon the merits. The learned Judge, after commenting on the subject of bills of particulars in actions of tort, and showing that ordinarily they will not be granted in that class of actions, says: "But as I have said, the question is as to the power of the court," and he proceeds to sustain his position that the court has no such power by arguing that the defendant could have obtained an adequate remedy by a motion under section 160 of the Code to make the complaint

more definite and certain, and that that was the appropriate and sole remedy.

After a careful examination of the opinion we are satisfied that it does not in any substantial respect qualify the statement in the order that the motion was denied on the ground of want of power, and that the other grounds stated are that a different remedy is provided by the Code, and the party is confined to the one thus provided. This being the shape in which the case comes before us, we think it presents a question of law, and is therefore appealable to this court. It may not be absolutely essential to consider the question whether the particulars sought could have been obtained under section 160, by an application to make the complaint more definite and certain. If the power to order particulars existed before the enactment of that section it is not thereby abrogated. The most that could be said upon the subject is, that, if section 160 affords an appropriate remedy the court might require the party to resort to that remedy. Both remedies might consistently exist together, but so much stress has been laid on the assertion that a remedy could have been obtained under section 160, that it is proper to ascertain whether or not that position is sound.

The language of the section is: "When the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain." It will be observed that it is only where the precise nature of the charge is not apparent that an application can be made under this section. It enables a party to obtain a definite statement in the pleading of the nature of the charge intended to be made against him, but not of the particulars or circumstances of time or place. For this purpose a different proceeding is pointed out, viz., an application under section 153, which provides, among other things, that "the court may in all cases order a bill of particulars of the claims of either party to be furnished." It is evident that in the present case there was no occasion for an application under section 160 to make the complaint more definite and certain. There is no uncertainty or indefiniteness in respect to the nature of the charge made against the defendant. The difficulty under which he claims to be laboring is that the complaint does not point out the times or occasions when the alleged offences are claimed to have been committed, but avers simply that they were committed on the 10th of October, 1863, and divers other days and times after that day and before the commencement of this action, thus covering a period of very nearly six years, the action having been commenced in August, 1874. He denies that the acts charged were ever committed, but claims that for the purpose of preparing his defense it is necessary that he should be furnished with the particulars of the time and place in order that he may summon witnesses to rebut such evidence as may be brought against him, or explain the circumstances which may be proved, and upon which the plaintiff may rely to establish the charges.

In action upon money demand, consisting of various items, a bill of particulars of the dates and description of the transactions out of which the indebtedness is claimed to have arisen is granted almost as a matter of course; and this proceeding is so common and familiar that when a bill of particulars is spoken of it is ordinarily understood as referring to particulars of that character. But it is an error to suppose that bills of particulars are confined to actions involving an account, or to actions for the recovery of money demands arising upon contract. A bill of particulars is appropriate in all descriptions of actions when the circumstances are such that justice demands that a party should be apprised of the matters for which he is to be put on trial with greater particularity than is required by the rule of pleading. They have been ordered in actions of libel. (*Escape—Davis vs. Chapman*; *Adolph & Ellis*, 767, 7, *Dowl & R.*, 774; *Tresspass—Johnson vs. Birley*, 5 *Barn. & Ald.*, 540; *trover—Humphrey vs. Cottleyou*, 4 *Cowan*, 54, and in ejectment—*Vischer vs. Conant*, 4 *Cowan*, 396.) Even in criminal cases the instances in which the courts have by analogy to the practice in

civil actions ordered bills of particulars, are frequent, viz.: On an indictment for being a common barrator, where a general form of pleading is allowed, (*Hawkins P. C. B.*, C. 83, sec. 13; *Goddard vs. Smith*, 6 *Med. R.*, 261; *Commonwealth vs. Davis*, 11 *Pick*, 432.) On an indictment for nuisance the prosecutor has been required to specify particulars of the separate acts of nuisance which he intended to prove, (*Rex vs. Carwood* 3d, and *Ell*, 815, *Regina vs. Flower*, 3 *Jurist*, 558, and in a prosecution of embezzlement, *Rex vs. Hodgson*, 3 *Carv. and Payne*, 300.) And in England there is nothing more common at the present day than to order particulars to be filed in an action for divorce, either on the ground of cruelty or adultery, and this is done on the application either of the defendant, or in cases where the wife is the defendant, of the person with whom she is alleged to have committed adultery, and who under the statutes 20 and 21, *Vict.*, chapter 85, is joined with her as co-respondent for the purpose of being mulcted in damages. These cases show very clearly the opinion of the English courts, that a bill of particulars can be ordered in an action of crim. con., because section 32 of the statute last referred to expressly provides that where the alleged adulterer is named in the petition as co-respondent, the claim made by every such petition shall be heard and tried on the same principles, in the same manner, and subject to the same or the like rules and regulations as actions for criminal conversation are now tried and decided in courts of common law. Under this provision particulars have been ordered on the application of the co-respondent as well as of the respondent. (*Higgs vs. Higgs*, 11 *Weekly*, *Rex*, 154, and see *Hunt vs. Hunt*, and *Duke*, 2 *Sw. and Trist*, 574.)

The cases in which the complainant has been required to furnish particulars on the application of the respondent, are too numerous to justify their citation here. There are nearly a dozen of them in volumes 2 and 3 of *Swaby and Tristram's Probate and Divorce Court Reports*, which we have examined, and a similar order was made by the Supreme Court of Massachusetts, in 1834, in the case of *Adams vs. Adams*, 16 *Pick.*, 254. In this State, Chancellor Walworth, in the case of *Wood vs. Wood*, 2, page 103, laid down the rules which have since governed in actions between husband and wife for divorce, and rendered applications for bills of particulars unnecessary. It must be remembered that here, when the charge of adultery is denied, the issue must be tried by jury, unless the parties consent to a different mode of trial, and it is even doubtful whether they should be permitted so to consent; but in a contested case the Chancellor laid down the rule as follows:

"The only safe and prudent course is to require the charge, whether of crimination or recrimination, to be stated on the pleadings and in the issues, in such a manner that the adverse party may be prepared to meet it on the trial. If the persons with whom the adultery was committed are known, they must be named in the defendant's answer, and the adultery must be charged with reasonable certainty as to time and place. If they are unknown, that fact should be stated in the answer and in the issue, and the time and circumstances under which the adultery was committed should be set forth. Neither party has a right to make such a charge against the other on mere suspicion, relying upon being able to fish up testimony before the trial to support the allegation."

The Chancellor here speaks of setting forth the particulars in the answer, because the case then before him was one of recrimination. In the case of the *Commonwealth vs. Snelling*, 15th *Peck*, 321, Chief Justice Shaw gave a very thorough examination to the subject of the practice of the courts of common law in requiring bills of particulars, and the principle upon which it is founded, and, after an extensive review of the authorities, came to the conclusion that the general rule to be extracted from them was that where, in the course of a suit, from any cause, a party was placed in such a situation that justice could not be done at the trial without the aid of the information to be obtained by means of a specification or bill of particulars, the court, in virtue of its general authority to regulate the



conduct of trials, had power to direct such information to be seasonably furnished. The authorities cited by him are decisions in civil cases, but by analogy he applied the principle to a criminal prosecution for libel, and sustained an order requiring the prisoner to furnish particulars of his justification of a general libelous charge against the magistrate.

The same rule is laid down in a recent case in the Court of Queen's Bench, in Ireland (Early *vs.* Smith, Cuss Com. Law. R., Appendix 35), where it was held, and on the authority of many of the same decisions which are cited by Chief Justice Shaw, that the rule which governs the courts in ordering particulars to be given, is that in all cases, whether trespass, trover, or on the case, the court has a general superintending power and control, no matter what the form of the action may be. If the complaint or declaration is conceived in vague and general terms, without specifying the circumstances under or the occasions on which the plaintiff relies, and the defendant satisfies the court, by affidavit, that either for the purpose of pleading or of defense at the trial, it is necessary that the plaintiff be more specific, and more clearly define his cause of action, the court has a general jurisdiction to order the plaintiff to give a more precise and specific description of that upon which he relies. In the case last cited a bill of particulars was ordered in a case of oral slander. Although no precedent could be found for an order for particulars in such a case, the court determined that the circumstances presented to them brought the case by analogy within the reasons of those in which particulars had been ordered, and that, therefore, they were authorized to afford the relief required.

A reference to a few of the authorities upon which these decisions were founded, will show that in almost every case in which defendant can satisfy the court that it is necessary to a fair trial that he should be apprized beforehand of the particulars of the charge which he is expected to meet, the court has authority to compel the adverse party to specify these particulars so far as in his power.

For instance, in *Doe vs. Phillips* (6 Term Rep., 597), an act of ejectment was brought. It was made to appear to the court that the action was founded upon the alleged forfeiture of a term of a lease by the breach of covenants contained in the lease. The court ordered the plaintiffs to furnish particulars of the breaches of the covenants, of the times when, &c., he meant to insist that the defendant had forfeited the lease. To the same effect was the case of *Doe vs. Brood* (2 Man. and Gr., 523, see in *Davies vs. Chapman*, 5 Adol. and Ell., 767), it was held that in an action for an escape, the plaintiff might properly be ordered by a Judge to give a particular of the alleged escape, specifying the time and place, and that the plaintiff is bound to specify them precisely, if he could, and if not, as well as he was able.

Analogous cases are to be found throughout the books in this State. It was long since recognized that in actions of ejectment, to ascertain the precise premises for which the plaintiff was proceeding, the constant course was to obtain a bill of particulars. (*Vischer vs. Conant*, 4 Cow., 396, and so in actions of trover, *Humphrey*, 50; *Cottlegan*, 4; Cow., 54). As I have already shown, there is no class of cases in which, in England, even at the present day, it is more common to order particulars to be furnished than in actions in which adultery is charged. If the charge is general and vague, particulars are always ordered. As early as the year 1692, in the case of the proceeding for divorce against the Duchess of Norfolk, before the House of Lords of England (reported in 8 Hargrave's State Trials, 35, and Howell's State Trials, vol. 12, p. 833), the Duchess demanded particulars of the charge against her. They were ordered. The complainant furnished a statement that the person charged to have committed the crime with the Duchess was John Germaine, of, &c., and that the times were between the months of June and December, 1685, and several times since, specifying places. The petition of her husband was presented in 1692. To this charge, covering six years, she answered that the charge as

to time and place was too general, and did not answer the end of the order of the House of Lords. A further and more definite bill of particulars was then furnished, affording the complainant an extensive field for proof, but at the same time indicating to defendant the periods and occasions in respect to which she was called upon to defend herself.

Without following the line of English decisions, I come at once to those of our courts in Pennsylvania as early as 1784. In the case of *Steele vs. Steele* (1 Dall., 49), after issue was joined in an action for a divorce for cruelty, the court held that notice ought to be given of the facts intended to be proved under the general allegations of the libel. In 1805, in *Garry vs. Garry* (4 Yates, 244), the libel charged that the respondent, on the 10th of June, 1799, at the county aforesaid, and at other times and places, committed adultery with Esther Palmer and other lewd women to the plaintiff unknown, and the court held that unless the complainant, before trial, specified in a written notice the time, and places, and attendant circumstances, she should be confined in the evidence to acts of adultery committed with Esther Palmer.

In Massachusetts, in 1834, in the case of *Adams vs. Adams*, 16 Pick., 254, the libel for divorce charged acts of adultery generally, and a bill of particulars was ordered.

Most of the authorities which I have mentioned, consist of adjudications prior to the amendment of 1849 to Section 150 of the Code of Procedure, which is in these words: "And the Court may, in all cases, order a bill of particulars of the claim of either party to be furnished."

It must be borne in mind that we are discussing simply a question of power, whether in the case before us the Court below had power to order particulars to be furnished; not whether, upon the facts disclosed by the affidavits, the Court below ought or ought not to have ordered particulars, but whether it had the power to do so. If it made a mistake in that respect we must correct it. If the Code had been silent upon the subject of bills of particulars, the 469th section would probably have sufficed to preserve the authority of the Court to order particulars in all cases before accustomed. But the express authority conferred by section 153 to order particulars in all cases, especially when read in view of cases which have been, and in which particulars had been ordered, would seem to place the question beyond doubt. Many of the arguments on the part of the plaintiff are more proper to be addressed to the Court of original jurisdiction on the question of the exercise of its discretion than to this tribunal.

It is claimed that an important element in the plaintiff's case consists of confessions made by the defendant, and that, if particulars are ordered, it will be necessary to prove that he confessed the acts to have been committed at the dates specified in the bill of particulars. This is an imaginary difficulty. It would be absurd to suppose that any tribunal of ordinary intelligence would order a bill of particulars in such form as to exclude evidence of general confessions.

The same argument was used in case of *Codrington vs. Codrington*, Andrews 2, Swab and Twist, 308. After an order for particulars had been granted, the complainant delivered particulars in which he alleged that the respondent had committed frequent acts of adultery between 1859 and 1862 with one Lient, Mildmay, at Malta, and during a journey in Switzerland, Savoy, Sardinia and Italy. Application was made for further particulars, and it appearing that the charge was founded upon the contents of a diary and letters of the respondent which had come to the petitioner's hands, it was ordered that unless the petitioner gave further particulars he should be confined in his proof to the confessions contained in the diary and letters.

It is further urged that the defendant in such a case needs no specification of particulars, because he knows better than any other but one the details about which he seeks information. This is *petitio principii*; it assumes that the defendant has committed the acts with which he is charged, while the very question to be tried is whether or not he has committed them.

A further argument is, that to make the disclosures sought will afford the defendant an opportunity to tamper with the plaintiff's witnesses. This argument has been used in many of the cases to which I have referred, and has been uniformly rejected. The principle upon which orders for particulars are granted is the advancement of justice and the preventing of surprise at the trial. The court must see that both parties are fairly dealt with, and it cannot be presumed that it will make any order which shall shield the defendant from just responsibility.

Whether in the exercise of its discretion it should grant or refuse the order applied for we are not to decide. All that we decide is that it has the power, if it sees fit, to order particulars to be furnished, and that in deciding that it had not such power it committed an error in law which requires us to reverse its decision.

A point is made on the part of the plaintiff which requires notice. It is contended that the General Term, in affirming the order of the Special Term, must be presumed to have passed upon the merits on the facts as well as upon the law of the case, and the decision in *Tracy vs Altemeyer*, 46 N. Y., 593, is cited in support of this point. The answer is that in the present case, it appears that the orders of the Special Term were reviewed by only two Judges of the court; that they were divided in opinion, and that it was only by force of the statute specially applicable to the City Court of the Brooklyn Laws of 1870, page 1,047, section 6, that the order stood as affirmed, the two Judges disagreeing.

Our conclusion is that the orders of the special General Term of the City Court of Brooklyn be reversed without costs, and the case remitted, to be heard at Special Term; that its discretion may be exercised upon the merits.

Chief Justice Church, Justices Folger, Rapallo, and Andrews.

#### JUDGE ALLEN'S DISSENTING OPINION.

Here follows the opinion of Judge Allen :

TILTON vs. BEECHER—ALLEN J.

If the court below had not the power to grant the motion, the order should be affirmed. If the power existed, its exercise was in the discretion of the City Court of Brooklyn, and the action of that court in the exercise of that discretion is not the subject of review in the court. In one or more cases in which we have thought the court of original jurisdiction had erred in refusing to act by reason of a supposed want of power, and have reversed the orders and remitted the proceedings to the end that the proper court might exercise the discretion the law had vested in it. In these cases it appeared by the order and record of the court that the decision of the Court below was placed exclusively on the ground of a want of power. Here we have not the record evidence. The motion at Special Term was denied for want of power, and for other reasons stated, showing conclusively that the relief was not denied solely upon the ground that the court had no power to grant it. The clear inference from the terms of the order is, that the Judge doubted whether the court had power to order the information to be furnished; but if it had the power, a proper case had not been made for the exercise of the power. If the opinion is referred to, the same conclusion will be arrived at. The Judge had evidently great doubts, and inclined to the opinion that there was a want of power, but was also of opinion that it was not a proper case for the relief if the power existed. The order at the General Term surely affirms the order without assigning or declaring the reasons, and we must assume that it was affirmed on the merits, it not appearing that it was affirmed for any other reason. If the fact that it was affirmed under the statute by a divided court, which is not stated in the order, the result would be the same. The facts giving this Court jurisdiction of the appeal must appear by the record. They do not so appear in the case. I am for the dismissal of the appeal.

Judge Grover doubts the existence of the power, but concurs in the opinion of Judge Allen.

#### JUDGE McCUE GRANTS THE BILL OF PARTICULARS

Sustained by this decision of the Court of Appeals, the counsel for the defendant renewed their application for a bill of particulars before Judge McCue, at a Special Term of the City Court, December 10, 1874. The application was granted, Judge McCue writing the following opinion :

Motion for a bill of particulars:

The court of last resort has decided that this court has power to order a bill of particulars in all descriptions of actions when the circumstances are such that justice demands that a party shall be apprised of the matters for which he is to be put on trial, with greater particularity than is required by the rules of pleading.

Application is now made by the defendant for a statement in writing, verified by the plaintiff, of the particular times and places at which he expects or intends to prove the commission of any criminal acts between the defendant and the plaintiff's wife.

After a careful examination of the papers submitted on the motion, and after deliberating upon the able and suggestive arguments of counsel, I am of opinion that the present case is a proper one for the exercise of judicial discretion, and that the plaintiff can without any injustice to himself, give the defendant the information desired by him, so as to enable him to prepare fully to meet the plaintiff's charges.

The law imposes no impossibility, and does not require from the plaintiff the designation of a precise day, at the hazard of failure of justice if he fail to prove the act upon the precise day named. It is sufficient if he designates the day with such reasonable approximation as that the defendant is fairly apprised of the charges.

In view of the affidavit of the plaintiff read on this motion, it will be sufficient for him to state in the bill of particulars to be furnished that the two acts of criminal intimacy alleged to have taken place on the 10th and 17th days of October, 1868, were committed on or about those days, and at either one or the other of the places mentioned in the affidavit; or, as suggested by one of the counsel for the defendant, it may be regarded as sufficient to say that these acts were committed during the month of October, 1868. Such a statement fairly acquaints the defendant with the charge he is to meet. I think it not improper to remark here, that the frankness with which the defendant's counsel concede that such a statement may be regarded as a reasonable compliance with the rule proper to be applied in such case as this renders this application more easy of disposition than it seemed to be when the motion was first made at Special Term.

The objection to giving a statement of particulars seems to rest mainly upon the ground that the designation of particular acts of adultery necessarily excludes proof of confessions made by the defendant, going to establish acts of adultery, when no time or place was named in the confession. The general confessions of the defendant may be given in evidence against himself, and they may be sufficient, if accepted in full force by the jury, to convict the defendant, and it is clear that all declarations, writings and documents which are properly admissible as evidence, may be used with all the force and effect they deserve against the defendant to establish the main issue.

The radical difference in the proposed orders submitted by the respective counsel seems to be this: The plaintiff insists that he shall not be precluded from giving evidence of acts of the defendant, by which the adulterous intercourse, charged in the complaint, may be established, "although it may not thereby appear to have been committed on any particular day, or at any particular place;" while, on the other hand, the defendant



insists that if by acts it is intended to prove specific acts of adultery, the bill of particulars should state these acts with the same fairness with reference to time, place, and circumstances, as is suggested in relation to the two acts alleged to have been committed in the month of October, 1868. I cannot well understand how any act of the defendant can be offered as proving directly and specifically the adulterous intercourse charged in the complaint, "although it may not thereby appear to have been committed on any particular day or at any particular time." Such seems to be the plaintiff's proposition. Such proof would necessarily not only establish the commission of the adultery, but also, with some degree of certainty, both the time and place.

There is no practical difficulty in reconciling this apparent antagonism, as declared by the court of last resort in the decision made in this case. "The court must see to it that both parties are fairly dealt with." If the plaintiff proposes to prove any specific acts of adultery, other than those alleged to have taken place in October, 1868, it should be so stated. If the plaintiff does not propose this, it is no hardship to limit him to proof of the specific charges which he intends to press.

The plaintiff's proposition that if he be thus limited and fail in his proofs as to the acts alleged to have taken place in October, 1868, the defendant, "though confessing his guilt as to other times and places," must necessarily be acquitted, seems to be entirely untenable.

In the shape in which the former motion was made, there was force in the objection, for it was then asked that the plaintiff should be confined in his proofs to the times mentioned in the bill of particulars. On the present application, however, it is not sought to deprive the plaintiff of the benefit of the general confessions of the defendant. Such a rule might indeed "shield a defendant from just responsibility." We propose no such restraint.

As to the specific acts of crime charged against the defendant, he should be advised of them with reasonable precision. As to the results which may follow the proofs of acts (other than specific acts of adultery), documents, confessions and any other circumstances properly admissible in evidence, they must be left to the determination of the jury under the rules laid down by the court on the trial.

I am of the opinion, therefore, first, that the plaintiff should be limited as to his proof of specific acts of adultery to those named by him in his bill of particulars; second, that this order is not to be construed as prohibiting the plaintiff from introducing on the trial of this action testimony which may be admissible under the general rules of evidence as to any acts (other than the specific acts of adultery), declarations, writings, documents and confessions, in which alleged confessions no particular time or place shall have been referred to.

No costs of this motion.

A. McCUE,  
Judge.

#### JUDGE McCUE OVERRULED.

From this decision the plaintiff's attorney took an appeal to the General Term, which, having been heard before Judges Neilson and Reynolds, an order was entered on the 29th day of December, reversing Judge McCue's order. Judges Neilson and Reynolds concurred in this decision and wrote the following opinions:

#### JUDGE NEILSON'S OPINION.

CITY COURT OF BROOKLYN—GENERAL TERM.—  
Theodore Tilton, plaintiff and appellant, vs. Henry Ward Beecher, defendant and respondent.

This is an appeal from an order of the Special Term requiring the plaintiff to furnish a bill of particulars.

The application for the particulars was made before me in the first instance, and was denied "for want of power, and on the other grounds stated." The opinion filed with that order did expressly put that denial of one branch of the application on the want of power. That was as to confessions imputed to and denied by the defendant. It was shown that the plaintiff had stated in a newspaper article that the defendant had confessed the wrongful acts charged, and the application was to compel the plaintiff to state when and where those alleged confessions had been made. The views expressed in the opinion as to the untenable character of that part of the application, and as to the want of power to grant it, were accepted by the defendant's counsel, and that claim had since been abandoned.

The Court of Appeals, Judges Allen and Grover, dissenting, reversed my order as to the other claims to discovery, on the ground that the particulars had been denied because of a supposed want of power. The closing words of the order were not, it seems, well chosen; the expression, "for want of power and on the other grounds stated," having been taken to refer not to the two modes of treatment, but the one under restraint for want of authority, and the other having regard to the merits and the discretion which should have been exercised, but to one and the same ground of rejection, namely, the mere want of authority.

It appears, therefore, that the Court of Appeals reversed the order because of that disavowal of authority; that the doctrine of the court of last resort is that the court of first resort may, in the exercise of a wise discretion, order particulars to be furnished in actions for tests, including cases of this character. That is the extent of the decision.

But that court did not and could not determine that the application which had been denied should have been granted, but left the discretion to be exercised by this court in granting or refusing such application untrammelled and untouched.

In many of the cases cited in the elaborate opinion of Judge Rapallo, the bill or narration was so vague and general that something supplemental was necessary to enable the defendant to know what the real character of the charge was. When the particulars ordered in such cases in aid of the pleading were furnished, that pleading and the particulars combined became as definite and certain as the bill or complaint presented. Such cases do not, therefore, touch the question whether the complaint before us should be supplemented by the particulars, nor were they cited with a view to that question, but simply to show that the court may, as occasions arise, order the particulars.

If this practice can be conveniently and usefully applied to most actions for torts, it is not to be assumed that it can be well applied to such a case as this.

The nature of the offense, the secrecy and studied concealment attending its perpetration, constitute an objection. A good cause of action may exist for such a wrong, to be proved only by circumstantial evidence, and the plaintiff be utterly unable to comply with an order to give particulars as to time and place. It would, we apprehend, be so in most instances, the cases in which the particulars could be safely given being quite exceptional.

The particulars, when furnished, perform a double office. First, to advise the defendant; secondly, to limit the plaintiff. It may be a shield; it may be a sword. Before they are ordered it should appear that the applicant needs the information, and that the other party can give the particulars, to be held by them as in a firm grasp in the prescribed circle, without materially impairing his rights. If the subject-matter be such as in its nature admits of general or reliable information, a thing open as the day, the particulars may be ordered without hesitation. On the contrary, if from the nature of the subject the act or offense and the circumstances are not to be thus seen, known or resolved, the order should be granted with great hesitation, or withheld.

It was therefore material to consider whether the defendant

needed the information claimed and in this form. He shows by affidavit that he had no knowledge or suspicion as to the times or places at which the plaintiff expects to prove the case; was entirely at a loss to form any surmise concerning the probable line of proof which may be adopted by the plaintiff on the trial. That being so, he stood in the attitude common to suitors pressed by what they deem an artificial or unjust claim; the field of combat opened to him as it has been to litigants for generations. He will recognize the fact; his learned counsel will accept the suggestion that a defendant cannot by an interlocutory order be put in the position he will be, given the light he will have when on the trial the plaintiff's proofs are in and his case closed. But still the inquiry is whether or not, within a due course of procedure, the information can or should be furnished. If he did need that information, when the application was first made at Special Term, does that count rest on him still? I learn from the arguments and illustrations of counsel speaking to the case in court on this and former occasions, and from the affidavits, and generally from the press, that there had been examinations before a committee, the plaintiff present as a witness, that several statements have, from time to time, been given to the public, in each the plaintiff seeking to make out his case, and in his zeal setting forth and supplying his proofs. The details of the case have thus obtained a large publicity. In addition to that we have before us the plaintiff's affidavit, used at the Special Term in resisting the last motion, in which he states what proof he has and what he has not. If not otherwise obtained, this affidavit on file gives to the defendant the desired information. This the counsel concedes by his offer to accept that affidavit as the bill of particulars.

It must be gratifying to the learned counsel for the defendant to contrast the position of his client as thus advised with the position he would have occupied had the plaintiff, according to the general course, brought his action, studiously withholding all statements of the proofs he proposes to have at his command. The application for particulars would then have had much greater support.

But it does not appear from the proofs that the plaintiff has any actual personal knowledge which could with safety be put in the form of particulars. He had at best certain information by which he may have been enlightened or may have been misled; if not misled as to the substantive fact, he may have been as to the times and places to be designated under the order.

As the defendant has thus all the information which could be extorted by the orders of the court, should he be content, or should that as to time and place be put in the form of particulars? The change in form will not add one jot or tittle to the information as given. The advantage gained might be one which the defendant, as to the exercise of his own judgment would reject, one which might operate oppressively upon the plaintiff on the trial.

A special and theoretical suggestion in favor of the particulars remains to be noticed. It is said that, as the defendant is innocent, he may be surprised on the trial, may be confronted by fabricated testimony, as to acts never dreamed of by him; that if a statement of the times and places be given, he might be prepared to prove that at such times he was absent from the State. Such apprehensions, peculiar to a nervous suitor, do not deserve much attention. The statements that plaintiff intends to introduce fabricated testimony were fully met by his affidavit, and we must respect that denial. The case is not in this respect peculiar; the like suggestion, for aught that we can see, might be made in half the cases on our calendar. I have too much faith in the ordeal to which unknown witnesses may be subjected on the trial to accept such a suggestion. In few cases could a defendant be as free from a chance of being taken by surprise. As the case is expected to last some weeks in its trial, there would be ample time for the defendant to recover from any casual surprise and meet any unexpected testimony.

On the hearing of the Special Term, Judge McCue granted

the order from which this appeal is taken. After his usual method he wrote an opinion, an opinion entitled to great respect.

But the order as framed does not in terms or in the sense and spirit conform to the opinion. It is much less liberal than the opinion, and is in several respects objectionable.

First—The plaintiff is required to state the particular times and places at which he expects and intends to offer proof of specific acts of adultery.

The requisition is somewhat in contrast with the opinion; from which it would appear that the very day need not be stated. Yet, more strongly to be contrasted with the more liberal rule stated in the case in 4th of Cowen's R., p. 55: "In a bill of particulars the date of the items should always be given with as much particularity as possible. If the precise day cannot be stated, the month or year probably can."

On the trial the order would be of binding force and would control. Secondly, the next clause in the order precludes plaintiff from offering any evidence at the trial to prove any specific act of adultery at any other time or place than stated in the particulars.

We think this improper, not only because proof otherwise admissible and somewhat circumstantial in its character would be excluded, but because an order of *non pros*, or for such preclusion should not be made until after a previous order to furnish the particulars had been disobeyed. The deprivation should follow some offense.

The residue of the order provides that the plaintiff shall not be prohibited from introducing testimony, confessions, and so forth, other than as to specific acts of adultery, though no specific time be referred to. That relates to the mere introduction of such proof, not to the effect of it when received.

At the close of the argument yesterday morning I entertained the hope that we could modify the order and in a sense affirm it, but on further examination and reflection we find that, according to our convictions, impossible, and after much deliberation are constrained to reverse the order.

J. NEILSON,  
*Chief Justice.*

#### OPINION OF JUDGE REYNOLDS.

The Court of Appeals has decided that this Court "has the power, if it sees fit, to order particulars to be furnished," and has remitted the case to this Court to decide "whether, in the exercise of its discretion, it should grant or refuse the order applied for."

Upon the former appeal, I considered the question carefully, and came to the conclusion that this is not a proper case for the exercise of that power. With great respect for the views of my brother McCue to the contrary, I still think that the order ought not to be made, and for reasons given in the opinion then filed by me.

After all the statements and affidavits that have been made in this matter, I think there is more danger that an order so exacting as to be at all effectual would work hardship and injustice to the plaintiff, than that the defendant, without it, would suffer from surprise, upon a trial, which, as the counsel on both sides suppose, is to last for weeks.

The usual course of procedure, and the rules of evidence will, I think, conserve the rights of both parties.

I am therefore in favor of reversing the order appealed from.

GEORGE G. REYNOLDS,  
*J. C. C.*

#### THE ORDER OF REVERSAL.

In pursuance of the above opinions, the following order was drawn by Thomas E. Pearsall, Esq., of counsel for Mr. Tilton, approved by Chief Judge Nelson, and entered on record in the Clerk's office of the City Court:



At a General Term of the City Court of Brooklyn, held at the Court House, City of Brooklyn, on the 29th day of December, 1874, present, Hon. Joseph Neilson and George G. Reynolds, Judges:

Theodore Tilton, plaintiff and appellant, against Henry Ward Beecher, defendant and respondent.

The appeal from the order entered in this action on the 11th day of December, 1874, requiring the plaintiff to furnish "a statement of particulars, setting forth the particular times and places at which he expects or intends to offer proof that any specific acts of adultery occurred between the defendant and the wife of the plaintiff, and that plaintiff be precluded from offering evidence at the trial of this action to prove the occurrence of any specific act of adultery at any other time or place than such as shall be set forth in the said statement of particulars," having been heard at the General Term of this court—

It is now on motion of Morris & Pearsall, attorneys for the appellant, after hearing Roger A. Pryor and William A. Beach, Esqs., of counsel for appellant, Thomas G. Shearman and B. F. Tracy, Esqs., of counsel for respondent, ordered that the said order appealed from be and at the same time is hereby reversed, without costs.

(A Copy.)

GEORGE W. KNAEBEL,

Acting Clerk.

The order for a Bill of Particulars having been finally refused, the suit went to trial upon Mr. Tilton's original complaint, on August 21, 1874.

The cause was called on Monday, January 4, 1875, by Judge McCue, in the Brooklyn City Court, Part I. Mr. Beecher and his counsel were present, but as the case was called two hours before the time understood by the plaintiff's counsel, Mr. Tilton was not represented, except by Mr. Pearsall, whose attendance was accidental. He answered "Ready" to the call, however, but insisted on an adjournment to the next day. Judge McCue, by right of assignment, should have held the term, but there had been an implied understanding that the case should be sent to Judge Neilson. In the preliminary contests in which Judge McCue had granted a bill of particulars, and Judge Neilson had denied it, the opinion of both Judges as to the nature of the evidence to be admitted on this particular case was foreshadowed. Naturally, Mr. Beecher's counsel were anxious that the case should be tried before Judge McCue, while the plaintiff preferred Judge Neilson. It was thought on this first day that Judge McCue would preside, but in accordance with Mr. Pearsall's desire the case was adjourned till 11 a. m. the next day,

and the matter left undecided. During the afternoon the special panel of jurors was called and sworn in Part II. of the City Court over seventy being excused, however. On the same day the testimony of James H. Drake of Staten Island, summoned for Mr. Beecher's side, was taken *de bene esse*, the witness being about to sail for Europe. His testimony was solely regarding declarations of Mr. Moulton denying the truth of the reports published in *Woodhull & Claflin's Weekly*.

On Tuesday, January 5, the question as to whether the case should be tried before Judge McCue or Judge Neilson was argued. The counsel for Mr. Beecher strenuously objected to its being sent to Judge Neilson, Mr. Everts denying the power of the Court to dispose of the case in this way. Mr. Beach, however, insisted that an agreement made to try the case before Judge Neilson was binding. Judge McCue, after consulting with his associates, decided to send the case to the other part of the Court. Mr. Everts took an exception, and Judge Neilson began impanelling a jury. Three jurors had been selected at the close of this day's work.

On Wednesday, eight jurymen had been obtained, and on Thursday the twelve jurors had been secured, all of whom, however, were subject to peremptory challenges. Each man was subjected to the closest scrutiny, and lawyers unite in saying that such an inspection of jurors has never before been known in this country, except, perhaps, in the case of Wm. M. Tweed.

On Friday, January 8, three of the jurors were peremptorily challenged—two by Mr. Tilton's counsel and one by the defense. Two others were excused by the mutual consent of the counsel on both sides. The places of the five thus dismissed were filled on that day, and when finally completed the jury stood as follows:

Griffin B. Halstead,	Edward Whelan,
Henry Thyer,	W. H. Davis,
George Hull,	John F. Taylor,
Christopher Fitter,	Wm. T. Jeffrey,
Samuel Flate,	Chester Carpenter,
A. R. Case,	John McMunn.

The relative positions of Griffin B. Halstead, the first juror, and Chester Carpenter, the eleventh, were changed by Judge Neilson, Mr. Carpenter thus becoming the foreman.

## FIRST DAY'S PROCEEDINGS.

### SCENE IN THE COURT-ROOM.

After the dull recitative of the examination of jurors, the real action of the Brooklyn scandal suit opened on Jan. 11 with the address of ex-Judge Morris. Inasmuch as the prosecution had admitted, during the argument on the bill of particulars, that no testimony had been kept in reserve, and that the evidence in the trial by jury would be the same as in the "trial by newspaper," the interest manifested in the opening appeal was not intense. It was, in fact, a review of the salient features of the case, and if the phrase "we will show" had been changed to "we have shown," it would have passed for a "summing up." As the case was opened, there are to be no surprises for the court-room or the jury during the trial, so far as the prosecution is concerned. The alleged confessions of Mr. Beecher and Mrs. Tilton to Mr. Tilton, Mr. Moulton, and others, the correspondence of Mr. Beecher, the letters of Mrs. Tilton and Mrs. Morse, the alleged clandestine correspondence between Mr. Beecher and Mrs. Tilton, which was quoted by Mr. Moulton in his first statement, and the circumstantial evidence of guilt in the efforts which Mr. Beecher made for concealment, the mortgaging of his house, the payment of Bessie Turner's school bill, etc., are the main points of the prosecution, and not one of them has the faintest flavor of novelty. The apology intrusted to Mr. Moulton seems to be the pivot of Mr. Tilton's case, around which everything else turns.

For two hours before the proceedings were opened the long corridors of the court-house were thronged, and the services of a large number of police were required. Ticket-holders alone were admitted, and long before the Judge's gavel had been heard every seat was occupied. Mr. Tilton and his group of counsel appeared promptly at 11 o'clock, and were soon followed by Mr. Beecher's body of defenders. In a moment every eye was turned to the doorway as Mr. Beecher, accompanied by Mrs. Beecher, entered the court-room. Friends near the court alley shook hands with Mr. Beecher with heartiness as he advanced. It was a small triumph as such things go, and there was a pleased expression on his face when he took his seat. A buzz of talk followed their entrance, and comments were exchanged on the propriety of Mrs. Beecher's presence. If her critics, however, expected that there were to be passages in the opening address

which would be offensive to the ear, they were doomed to disappointment, for the language was chaste and in good taste.

The jury-box was now full, and after words of caution to the audience from the bench and a few remarks by Mr. Evarts, the proceedings opened. Ex-Judge Morris began his address soon after 11 o'clock and closed at 4 o'clock, an hour having been spent at lunch. He is a man of medium height, with black hair and side-whiskers, a ruddy face, a keen glance, a sympathetic smile, and an expression which is calm without being cold. His movements are easy and graceful, his manner is cool and deliberate, and his gestures are strong and full of force, being made with the full arm in long curves. His delivery is rather monotonous, for there are no changes of tone to vibrate through an audience. In the upper register his voice has a metallic ring, and is surcharged with force and earnestness. When he is speaking calmly, without emotion, his tones are clear and incisive. After a few sentences uttered in a grave, cautious manner, a forceful gesture is made, and he breaks out with ringing tones of indignation and accusation, which in a moment are muffled and hushed to whispers too low to be heard save by the jurymen. This method is repeated with few variations, and the effect of these whispered passages is very annoying to the audience, however they may impress a jury. After a quiet narrative passage he sums up the inferences in a passionate interrogation in a high key, as for instance, "Who was the transgressor?" Then after a long pause comes the reply in a whisper, "Her forgiveness I have." The repetition of this method rendered his delivery rather tedious. His invective in regard to the letter to Mrs. Tilton, in which Mr. Beecher intimated that a meeting would be safe, was marred by this alternation of high tones and whispers.

Mr. Morris appreciated the fact that his business lay wholly with the jury, and they were rarely out of his sight. He stood a few feet in front of them, with Mr. Tilton and Mr. Moulton directly behind him, and Mr. and Mrs. Beecher facing him to his left. Occasionally, in framing an accusation, he turned toward Mr. Beecher with a sweep of the left hand, and twice, when a reference was made to Mrs. Beecher, he cast a quick glance in her direction. With these few exceptions his eyes never left the jurors, and they in turn followed him with close attention. While there were few passages of heated denunciation, there was much keen, hard analysis.



Probably the most effective sentences were those in which he took to pieces Mr. Beecher's apology and clandestine letters. The expressions, "I humble myself before you as I do before my God," "Her forgiveness I have," "Bearing the transgressions of another," and many more were held before the lens of his own interpretation until their significance seemed to enlarge under such searching analysis. The apology which was delivered to Mr. Moulton in confidence was read in a deep voice with great intensity of manner, as if he wished the words to sink deep in the memory of every juror; and when every expression had been analyzed he assumed an attitude of triumph, and vehemently striking the table declared that it was not necessary to go one step further, for that letter condemned Mr. Beecher, unless the English language could be blotted out. Mr. Morris apparently was not in very good health when he began, but he warmed to his work, and his delivery was much better later in the day.

Probably the closest listener in the court-room was Mrs. Beecher. Her eyes were fixed on the speaker's face from first to last as if there was a magic spell in his voice. Her face was strangely colorless and impassive, and her self-possession was perfect. Her forehead is high and abnormal, and is crowned with hair which is as white as snow. Her features are large, commanding and positive, and her eyes are keen and piercing. She was dressed in black with a blue woolen wrap. As she sat there, motionless, with a strange calm on her features and a peculiar glitter in her eyes, her dignity seemed to assert itself and to set at defiance the critics who judged that her right place was not beside her husband in his hour of trial.

Mr. Beecher seemed to be quite as self-possessed as his wife. At first his eyes were directed toward the jury-box, but soon they were staring vaguely at the frescoed ceiling. Subsequently he seemed to be taking notes in a small account-book, which he occasionally handed to Mr. Shearman.

Theodore Tilton's features were as impassive as Mrs. Beecher's. He faced the jury, and his eyes seldom strayed to the right or the left. He manifested not a spark of emotion, save a smile when he bent forward and whispered to Francis D. Moulton, who sat his elbow.

The counsel on both sides employed themselves variously, sometimes making a memorandum, sometimes exchanging whispers, but generally paying close attention to the speaker. Back of the lawyers

were the upturned faces of the spectators. The few words which Judge Neilson had addressed to the audience had insured good order and silence, and even the pauses of the speaker as he referred to his notes before him were not signals for the small, rustling movements which generally cause confusion in a court-room. Many members of Plymouth Church were present. Among those who occupied seats near Mr. Beecher were Augustus Storrs, Horatio King, Edward J. Ovington, United States Assessor Freeland, Col. Beecher, the Hon. John Oakley, Moses S. Beach, Prof. Raymond, Alderman Whitney, and the leader of Plymouth choir. Scattered throughout the court-room were prominent residents, including Col. A. C. Davis, Sheriff Williams, Harvey Farrington, Judge Moore, ex-Senator Jas. Pearce, Col. Keeney, ex-Senator John C. Perry, Judge Troy, Corporation Counsel DeWitt, and ex-Judge Garrison. At the intermission and at the close of the proceedings Mr. and Mrs. Beecher were surrounded by their friends.

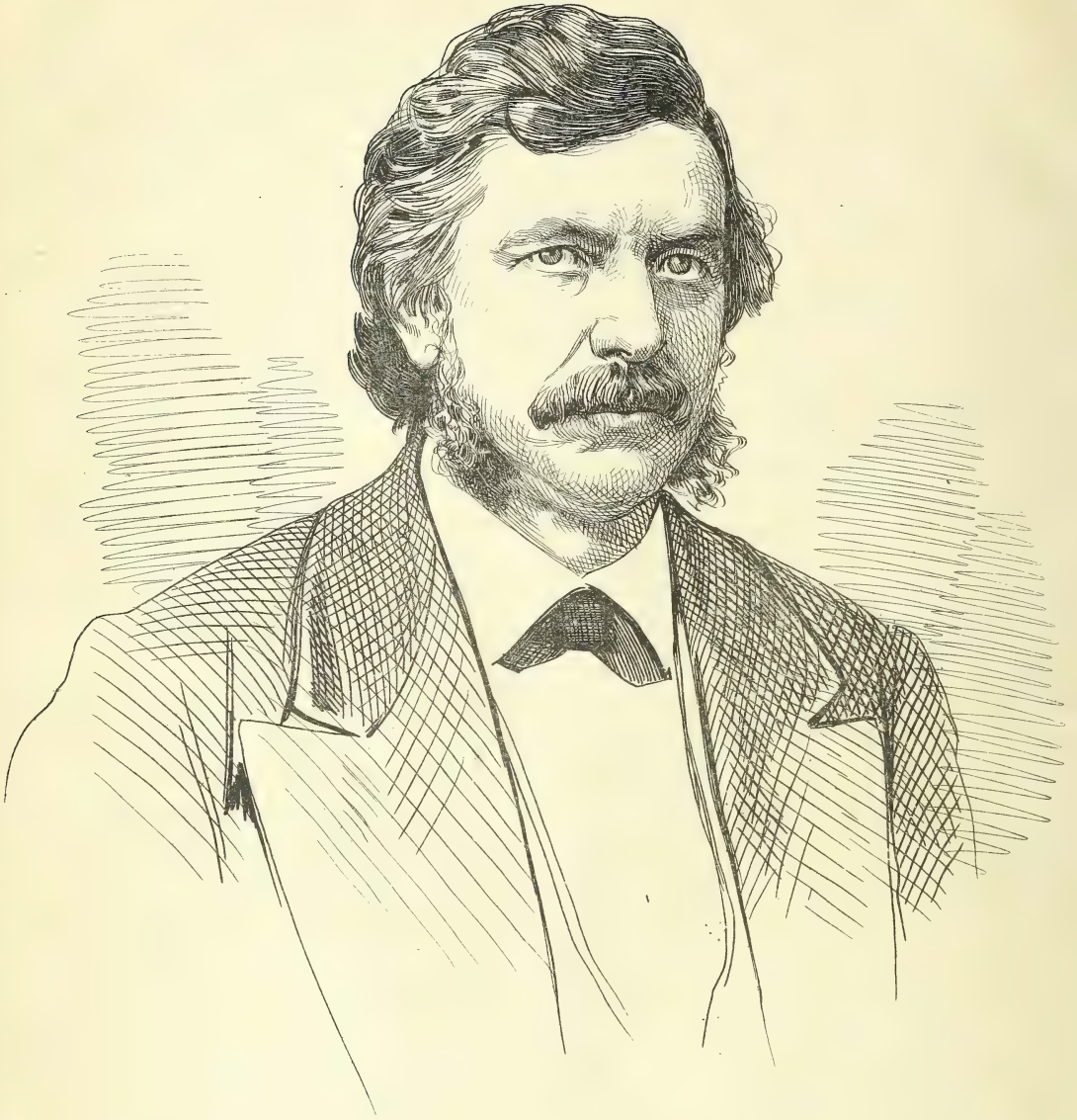
#### MAIN POINTS OF THE ADDRESS.

After a quiet introduction, in which ex-Judge Morris referred to the importance of the duty which the jury had to perform, and after reading extracts from legal authorities to show that adultery was a crime of darkness and secrecy, ex-Judge Morris cast a glance down the vista of the narrative until he reached the point of Mrs. Tilton's alleged confession to her husband on July 3, 1870. After that time Mr. Tilton ceased to attend Plymouth Church. There was an arrow through his heart, but it bore the wound in silence, rising to the level of higher Christian doctrine. On Dec. 30, 1870, he confronted the man who had wronged him. Mr. Tilton accused Mr. Beecher of the crime. The charge was made and not denied, and Mr. Beecher returned after seeing Mrs. Tilton with these words on his lips: "This will kill me!" The interviews with Mr. Moulton were described, and the functions of the "Mutual Friend" were next analyzed. The letter of apology was dissected, and great stress was laid on the fact that Mr. Beecher had made no denials. Mr. Moulton's mission was to conceal something. He was in the possession of a secret that could not be intrusted to any one else. This explained why Mr. Beecher went to Mr. Moulton's house every day to plan and plot. Take out the word "adultery" and there is no sense in Mr. Moulton's connection with the case.

Here a digression was made, and the explanations offered by Mr. Beecher in his statement were con-







*H. J. Morris*

sidered. There were two elements, the defense claimed—the grief of the defendant and the honor of Mrs. Tilton. An analysis was here made of the grounds of defense, that injudicious advice had been given to Mrs. Tilton, and that Mr. Bowen had been urged to dismiss Mr. Tilton. The point made by Mr. Tilton in his last statement, that the interview at Mr. Moulton's house preceded the dismissal of Mr. Tilton, was here repeated, and the claims of the defense were denounced as a "juggle of words and phrases." The letter of apology was then taken up, sentence by sentence, and it was urged that adultery furnished the only possible explanation. The fact that Mr. Moulton, a comparative stranger, was the only one with whom he could converse on the subject, and that Mr. Beecher even held aloof from his wife, was inexplicable under any other supposition. Above all things it could not be said that Mr. Beecher did not know the meaning of the words which he used.

The second meeting at Mr. Moulton's house after the apology was written was next described. Bessy Turner, a servant, had been tattling about what she had heard in Mr. Tilton's house, and she was sent out of the way to a boarding-school in Ohio, and her expenses were paid by Mr. Beecher. This was a proof of his guilt. He mortgaged his house for \$5,000 and gave the money to Mr. Moulton to aid *The Golden Age*, without Mr. Tilton's knowledge. This could only be interpreted in one way—Mr. Beecher had wronged Mr. Tilton. The letter from Mrs. Morse to Mr. Beecher, in which she refers to his "cracking jokes" in the pulpit, Mr. Beecher's letters to Mr. Moulton and Mrs. Tilton, and other portions of the scandal correspondence, were reviewed at great length, Mr. Beecher's language being analyzed closely. The so-called clandestine correspondence between Mr. Beecher and Mrs. Tilton was finally subjected to scrutiny, and the address closed with an appeal for a verdict in favor of the man whose home had been debauched and destroyed.

#### OPENING ADDRESS OF EX-JUDGE MORRIS.

It was a little after 11 o'clock on the morning of Jan. 11, when Judge Neilson demanded silence in the courtroom where he is trying the famous Tilton-Beecher case. Admission could only be gained by tickets bearing the signature of the Judge, and just enough had been issued to fill the room without densely crowding it in any part. The day's work was begun by the Judge directing Chester Carpenter, the eleventh juror, to assume the place of foreman.

The Clerk—During the trial, day by day, reporters will occupy such seats as they now have, no reporter intruding on the domain of another.

Judge Neilson—The audience will come to order, and keep perfectly silent.

The Clerk here called over the list of jurors, and all answered to their names.

Judge Neilson—Are counsel prepared to proceed?

Mr. Beach—Yes, Sir, on the part of the plaintiff.

Judge Neilson—I wish it understood by the audience that under no circumstances should there be any indication of approbation or disapprobation as to anything said. The audience is here not to make demonstrations to us to signify to the jury what their views may be, but are here expected to conform to the decencies of the place and keep silence. I trust they will do so.

Mr. Evarts—If your Honor please, the counsel think we ought to have a little more space assigned to us inside the bar. The burden is at present on our learned opponents to be sure, but we are all in the same feeling on that subject, I believe. I think there is more space necessary for the accommodation of the counsel, both of the speaker and those of us who wish to take notes.

Judge Neilson—I am desirous of doing what can be done, if you will indicate what you think.

Mr. Evarts—I do not think we have our share of this trial—of the space within the bar. The very great public interest and the very unusual attendance of reporters, is, of course, a matter that we all appreciate and feel alike about, I suppose. It is clear the dimensions of the room are such that either one interest or the other will have to be a little contracted.

Mr. Beach—I think after the opening we can give you more room at the table.

Mr. Evarts—Yes, Sir; we can change the tables.

#### IMPORTANCE AND LAW OF THE ISSUE.

MAY IT PLEASE THE COURT—GENTLEMEN OF THE JURY: I congratulate you that we have at last attained a stage in this trial where it becomes our duty to present to you the general features of the case on the part of the plaintiff, and your duty to listen, as I have no doubt you will attentively, to the facts as I shall narrate them to you in what I have to say in my opening address. It is not necessary that I should remind you of the great importance of the case that is now being tried, and the solemn duty that is devolved upon you as jurors in this case. You are now called from your various avocations to discharge one of the most important duties that has ever or will ever devolve upon you as citizens. This is no ordinary case that now engages the attention of this Court, and the attention of the entire community. This is no contest between litigants to determine the right of property, nor is it a contest to determine the right to personal liberty. It is above and beyond that—more far-reaching in its consequences than any case ever tried in this country. There is not a home in this broad land, nay, there is not a home in Christendom that is not interested in the result of your deliberations. This is a trial that involves, as I said, not the right to property or liberty, but it is a trial the consequences of which reach to the very foundations of society. The home, the marriage relation, with all that is dear in that



relation, is upon trial in this case. Upon the result of your verdict to a very large extent, also, will depend the integrity of the Christian religion. The plaintiff comes in Court, and, through the ordinary forms of law, says in effect that his home has been destroyed; that his wife's affections have been taken from him; that his children have been scattered; and that a once happy home is now desolate; and that the bright visions that he had in this world of attaining distinction and positions of honor have all been blighted; that he once had a happy family—none more so in the land—but he comes to you this morning, not from that once happy family, but he comes to you this morning from a voiceless home and a cheerless fireside, and he asks you, as fathers and as brothers and as husbands, to consider his case. And against whom is this terrible charge? Is it against some casual acquaintance, some casual friend? No; but he comes here and makes this charge against one of the foremost preachers in the land; against the man who in his youth united him in matrimony, at whose altar he received baptism. His spiritual adviser, his spiritual father, taking advantage of this sacred relation, has become, instead of his protector and his comforter, his destroyer. And who is it that makes the charge? It is no unknown person, no insignificant individual that comes in court and arraigns at the bar of justice the defendant in this case, but he is a man, as well as the defendant, of preëminent abilities; a man who had risen while yet a young man to great distinction in the land as a writer and as an author, whose pen was always upon the side of the oppressed, and whose voice, as did the voice of the defendant, thundered against tyranny and oppression. Four years ago, no man of his age in this land had before him so brilliant a prospect as had Theodore Tilton. Gifted by God as few men are gifted, intellectually and physically, he had before him a most brilliant career; but all at once a cloud settles down upon his household like a pall, the bright visions have faded, and where was sunshine there is now darkness, and misery, and desolation. Before the wife of the plaintiff fell a victim to the wiles of the seducer, no man in this land had a more happy home than he possessed. I will not detain you, gentlemen, at this stage of the case, or, indeed, at all in the opening, in picturing to you the home of Theodore Tilton prior to the 8th of October, 1868. During the progress of the trial you will learn, from the evidence, the nature and the character of the home that has thus been destroyed and desolated. Suffice it to say that, during all their married life, down to the period that I have indicated, they had one of the happiest of homes, a family of children growing up about them, loved by their father and mother as few children are loved. What, gentlemen—what will you say is just retribution for a man who destroys such a home? And in this case there are features which render the crime more heinous than in most cases of this character. Mr. Tilton when a boy, grew up under the eyes of the defendant; when but a child became a member of his church; when but a child, almost before of age, he married the girl that he loved, and from that time henceforth was associated with the defendant in the closest relations, associated with him in the editorship of a religious journal for many years; a frequent visitor at his house

looking upon him almost as a father, and admiring him above all men living, placing that implicit confidence in him which can only come from an admiration and absolute confidence. When separated by the ocean before this terrible calamity, before the violation of this friendship and the destruction of this home, the two men spoke of each other and wrote of each other as only men who had mutual confidence and admiration would speak and write of each other.

It has been said that this action has been instigated because of an enmity that the plaintiff had towards the defendant, and yet during all this period prior to the time that I have stated there was the closest friendship, the greatest admiration on the part of the plaintiff for the defendant, as manifested in their mutual letters and correspondence, down to the very time of the discovery of the wrong that had been inflicted upon him. This friendship and this admiration were attested in various ways, by gifts from one to the other, by their mutual and social intercourse, by every manifestation of love and affection, and while, as we say (and we think that we shall be able to convince you twelve men beyond all peradventure)—while, as we say, the defendant was sitting, at the request of the plaintiff, for his portrait to one of the most distinguished artists of our State; while, day after day, he was going there, sitting at the request of the plaintiff, and at the expense of the plaintiff, so great was his admiration of him, the illicit intercourse that we charge against the defendant was being carried on. At the very time, as we shall show you as clear as the sun now shines, when the defendant was sitting to have his portrait painted to be hung up in the house of the plaintiff, he was carrying on his illicit intercourse, and before long—before that portrait was completed and ready to adorn the walls of the once happy home, that home had been debauched, that family had been destroyed. Where shall the portrait be hung? What wall shall it adorn?

Well, gentlemen, this crime, as you are aware, is peculiarly a crime of darkness and of secrecy. We do not expect to bring eye-witnesses here in court to testify to this crime. Of course, that could not be expected; and perhaps I might as well here now, as at any time, call your attention to what one or two of our authorities upon this subject have said, which, probably, will give you a clearer idea of the character of evidence, the nature of it, and the force of it, than I could state to you, and I will detain you but a moment in calling your attention to one or two of those authorities. Says a learned writer upon this subject, the subject of marriage and divorce, and domestic relations:

"Adultery is peculiarly a crime of darkness and secrecy. Parties are rarely surprised in it, and so it not only may, but ordinarily must, be established by circumstantial evidence."

Dr. Lushington, a high authority, observes:

"It is not necessary to prove that the adultery with which a party is charged should have occurred at any particular time and place. The Court must be satisfied that a criminal attachment subsisted between the parties, and that opportunities occurred when the intercourse, in which it is satisfied the party intended to indulge might with ordinary facility have occurred."

Cresswell, J., says:

"Every act of adultery implies three things. First, the opportunity; secondly, the disposition in the mind of the adulterer; thirdly, the same in the mind of the *particeps criminis*, and the proposition is substantially true that wherever these three are found to concur the criminal fact is committed."

In a celebrated case Dr. Lushington used this language:

"It is, then, in evidence that not merely was there a criminal attachment, but that this attachment was not rejected, that Jeffreys [the alleged *particeps criminis*] admitted his familiarity, received his correspondence, that opportunities were constant, and there is nothing to show on her [Jeffreys's] part resistance or repudiation, nor that she at all discontinued his passion. To doubt, from such circumstances, that the consummation followed, would be to presume that the effect was not consequent upon the natural cause, and that this was a case of extraordinary exception and singular innocence."

Lord Stowell, a high authority, used this language in the 2nd of Greenleaf, page 38, from which I will read a paragraph. He observes:

"It is a fundamental rule that it is not necessary to prove the direct fact of adultery, because if it were otherwise there is not one case in a hundred in which that proof would be attainable. It is very rarely indeed that the parties are surprised in the direct fact of adultery. In every case almost the fact is inferred from circumstances that lead to it by fair inference as a necessary conclusion, and unless this were the case, and unless this were so held, no protection whatever could be given to marital rights. What are the circumstances which lead to such a conclusion cannot be laid down universally, though many of them, of a more obvious and of more frequent occurrence, are to be found in the ancient books; at the same time it is impossible to indicate them universally, because they may be infinitely diversified by the situation and character of the parties, by the state of general manners, and by many other incidental circumstances apparently slight and delicate in themselves, but which may have most important bearing in decisions upon the particular case."

As to the nature of circumstantial evidence, I will call your attention to one or two paragraphs. Chief-Justice Whitman of Maine says:

"Circumstantial evidence is often stronger and more satisfactory than direct, because it is not liable to delusion or fraud."

Chief-Justice Gibson says:

"Circumstantial evidence is in the abstract nearly, though perhaps, not altogether, as strong as positive evidence; in the concrete it may be infinitely stronger. A fact positively sworn to by a single witness of unblemished character is not so satisfactorily proved as a fact which is the necessary consequence of a chain of other facts sworn to by many witnesses of doubtful credibility."

Chief-Justice Shaw of Massachusetts, one of our ablest jurists, in the celebrated case of Webster, said:

"The distinction, then, between direct and circumstantial evidence is this: Direct or positive evidence is where a witness can be called to testify to the precise fact which is the subject of the issue in trial; that is in a case of homicide that the party accused did cause the death of the deceased. Whatever may be the kind or force of evidence, this is the fact to be proved. But suppose no person not present on the occasion of the death and of course no person can be called to testify to it, it is wholly, unsusceptible of legal proof? Experience has shown that circumstantial evidence may be offered in such a case; that is, that a body of facts may be proved of so conclusive a character as to warrant a firm belief of the fact quite as strong and certain as that on which discreet men are accustomed to act in relation to their most important concerns. It would be injuri-

ous to the best interests of society if such proof could not avail in judicial proceedings. If it were necessary always to have positive evidence, how many criminal acts committed in the community, destructive of its peace and subversive of its order and security, would go wholly undetected and unpunished. The necessity therefore of resorting to circumstantial evidence, if it be a safe and reliable proceeding, is obvious and absolute. Crimes are secret. Most men, conscious of criminal purposes, and about the execution of criminal acts, seek the security of secrecy and darkness. It is, therefore, necessary to use all other modes of evidence besides that of direct testimony, provided such proof may be relied upon as leading to safe and satisfactory conclusions; and—thanks to a beneficent Providence—the law of nature, and the relations of things to each other, are so linked and combined together that a medium of proof is often furnished, leading to inferences and conclusions as strong as those arising from direct testimony."

There is another class of evidence of the highest importance in the investigation of crime, and that is confessions made by parties. Where a person makes a confession, uninfluenced by fear, a free and voluntary confession of crime, it is considered the highest character of evidence of the fact. Says this author:

"Full confessions of guilt by an accused party are in the nature of direct evidence, and therefore do not properly fall within the scope of the present work. A brief notice, however, of the character, &c., of confessions of this kind when deliberately and voluntarily made, are justly regarded as constituting the highest and most satisfactory species of evidence that can be presented before a tribunal. They combine the statement of the physical facts which form the basis of the charge, and which is substantially the deposition of a witness to those facts, with that other most important species of evidence which can never be directly reached and brought to view by any other means, namely: that which presents the motives and intents which instigated and directed the criminal act, and these avowed by the party, who of all others has the strongest interest to conceal them."

## LOGIC OF THE APOLOGY.

Now, I have told to you briefly the general character of our evidence. First, the act of the party accused. Secondly, the confessions of the party accused, and with this very imperfect outline of our case, the nature of our case, the general character of our evidence, I will proceed to call your attention more specifically to the facts by which we propose to establish our case. The case opens on the 3d day of July, 1870, with the confession made by the wife of the plaintiff, though not communicated to the defendant until some time afterwards. On the 3d of July, 1870, the wife of the plaintiff, with an overburdened heart, confesses her guilt to the plaintiff; and here, gentlemen, I would call your attention to a circumstance that seems to me to possess great significance. Up to this date, the relations of the plaintiff and defendant had been most cordial. Nothing had occurred to interrupt the harmony of their friendship and their good feeling toward each other, so far as the plaintiff knew. He and his wife were members of the church of the defendant; but after the 3d day of July, 1870, the plaintiff never crossed the threshold of Plymouth Church, until the 31st of October, 1873, when he appeared there for the purpose of confronting the pastor of that church, and asking him in the presence of his congregation, if he, the plaintiff, had ever spoken falsely con-



cerning him. Why was it, and this is one of the circumstances in this case, that the plaintiff, all at once, without any outward, without any apparent cause, so far as the plaintiff knew, so far as the public knew, so far as any member of the church knew; without any apparent cause, the plaintiff, who was a member of the church, who was an admirer up to that time of the defendant, who admired him beyond all other men, who placed implicit confidence in him, who trusted him, who looked upon him almost as a father; he was his spiritual father, and all at once the plaintiff ceases to attend the ministrations of Plymouth Church—why was it? He had received some wound. Something had occurred that induced him to keep away from Plymouth Church, and he keeps away. He had received a wound. There was a cause. That wound had pierced his heart, but for the sake of his children, whom he loved as he loved his life, he carried that wound in his heart; but he could not listen to the ministrations of the man who had brought this great sorrow, this ruin upon him, and he bears it in silence. He stays away from the church, and he goes to his home and about his avocation with this arrow through his heart. Well, gentlemen, for months he bore in silence this great sorrow and this great wrong, and for that, too, he has been arraigned; for that, too, he has been abused and traduced, because he did not strike down the seducer of his wife; because he rose to a higher Christian plane, and because he could forego revenge; because he carried out the Christian doctrine—for that he is arraigned.

But I will leave those elements of this case to be handled by a man who can do it with more force and power than myself. But he carries this wound until the 30th of December, 1870. On the night of the 30th of December, 1870, the plaintiff confronts the defendant with a renewed confession of his wife, and accuses him of having committed adultery. What did the defendant do? What would an innocent man have done then and there if the charge had not been true. Would he have denied it? Yes. Would he have hurled it back with indignation? Yes. Did he? No. There is no pretense, has never been from that moment until the present, that he attempted to deny it there, or that he did deny it in the most indirect manner. The charge is made; what are the circumstances immediately following the making of that charge? The defendant visits the wife of the plaintiff, then sick in bed. She gives him a paper. He returns to the house of Mr. Moulton where this charge had been made against him. Not a word escapes his lips with reference to it. After he had his interview with Mr. Tilton, in which he was directly accused of this crime, and before he leaves the house, he says to Mr. Moulton, "Have you seen Mrs. Tilton's confession?" "I have." "This will kill me, this will kill me!" No denial either to Mr. Tilton or Mr. Moulton, but this exclamation, "This will kill me, this will kill me!" If a man ever could be called upon to deny so infamous a charge as that was, don't you think that that was the time and there was the place at which to have made that denial? But what is the next step in the history of this case? Why, the following night Moulton goes around to the house of the defendant and accuses him of having taken a mean advantage, of having acted meanly towards Mr.

Tilton in procuring the paper, and asked that it be delivered up to him. He goes there as the avowed friend of Tilton, a comparative stranger to the defendant, and he asks that he deliver up this paper to him. What does he do? Does he show him the door? Oh, no! Does he ask him why he accused him of meanness, and what he means by such talk in his house, he a comparative stranger, coming there as the friend of Tilton? Does he ask him? No. What does he do? Hands him the paper and then invites him to come and see him again. Think of it. And the next night, January 1st, he goes to the house of the defendant. He is invited into his study. What does he do? Does he inquire whether Moulton has brought an apology from the plaintiff to him or not, for his conduct? Oh, no! He writes for the plaintiff, not an apology, but a letter of contrition, and it commences, "My dear friend Moulton:"—the man who was a comparative stranger, the man who the night previous had obtained from him this paper; aye, had obtained it, as it is claimed, by threat. He says to this man, who twenty-four hours prior had accused him of meanness—of taking a mean advantage—who had demanded this paper, and had obtained it from him: "My dear friend Moulton,—I ask, through you, Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself; I even wish I were dead. But others must live and suffer. I will die before any one but myself shall be inculped. All my thoughts are running toward my friends—towards the poor child lying there praying with her folded hands. She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have. I humbly pray God that He may put it into the heart of her husband to forgive me. I have trusted this to Moulton in confidence." Gentlemen, might we not stop here? Would it be necessary if we simply wanted to make out our case against the defendant to go one step further, one step beyond that letter to prove his guilt? But we will go further. There are some circumstances which it is necessary, in connection with this part of the case, that I should explain to you. It must be conceded from this letter that the defendant had done some wrong, aye, some terrible wrong to the plaintiff. What was it? The plaintiff says that it was adultery. Mr. Moulton says that it was adultery. Mrs. Morse, in effect, says the same thing, and every act of the defendant, of the plaintiff, and of Moulton, during the three years and a half that followed, are in harmony with the fact of adultery, and utterly irreconcilable with any other theory of the case, and no human ingenuity can devise any other explanation. It is impossible. You have got to blot out the English language and all its meaning. So long as it stands no other explanation can be devised than the meaning we attribute to it. Why, adultery was the one sole fact that accounts for Moulton's connection with this case for the four years that he strove to save the defendant, with a fidelity unparalleled. Take out that word adultery, and what sense or meaning is there in his connection with the case, or was there ever any? It is the whole point, it is the focus, it is the lever upon which for the four years this whole case worked. Why did Mr. Beecher, the de-

tendant here, want to go to Moulton's day after day, twice a day sometimes, to see him to make arrangements to plan and to plot to conceal something, if that something was not adultery? Tell me why. Oh! but it is said that Mr. Moulton has denied that there was any truth in the charge, that Tilton has denied it. Of course Moulton has. What was he there for? Was he employed by Beecher, the defendant, to admit it; was he called in to expose the facts and to give them to the world? Oh! no; his mission was concealment. That is why he was wanted. That is why Moulton was required. He, not a member of the Church, it was to conceal and not to make known. He was the possessor of a secret that could not be trusted by this Christian minister to a single person on earth. There was no man on the globe to whom he could go. There was something so terrible about this secret, whatever it was, that he could not go to his church and ask their counsel and their advice, but he must have Mr. Moulton to manage this great secret; and Mr. Moulton did manage it—and successfully for four years—and saved the defendant to Plymouth Church as certainly as the sun shines in heaven to-day, as I will show you before I get through. Long before this would Plymouth Church have been without a pastor if it had not been for the fidelity of Francis D. Moulton.

#### THEORIES OF THE DEFENSE ANALYZED.

But, gentlemen, we are not left in the dark altogether about this from another standpoint. We declare that all the acts, and all the letters to which your attention will be called for the four years concerning this subject, represent but two points. First, the grief of the defendant, and, secondly, the honor of Mrs. Tilton—the honor of Mrs. Tilton and the grief growing out of the facts that involved her honor. Well, it is said, gentlemen, that great grief was caused by injudicious advice. Mr. Tilton had lost his editorship of *The Independent* and of the *Union*; and the defendant had counseled that—his family had been nearly broken up—and the defendant had advised it, and, beyond that, there was an intimation—that I have never yet been able to solve, and hope the counsel for the defendant will be in this case—of some undefinable cause—at one time; it was that he had been informed that she had conceived an undue affection for him; at another, “that his blind heedlessness and friendship had beguiled her heart;” and, at another, an intimation that she thrust her affections upon him unsought; and all this jumble of phrases and of words without any statement as to what caused this great contrition on the part of the defendant, on the 1st of January, '71. When he says that his blind heedlessness and friendship beguiled her heart, what does he mean? What does that fact import? What is the meaning of it? Blind heedlessness and friendship beguiling the heart of the wife of the plaintiff! How was that manifest—that fact on her part? What was done in consequence of that? What did she do? What did he do? How did it develop itself, and how was it manifested? Does he mean to say, or doesn't he, that the woman tempted and he did fall? I presume that my learned friend upon the other side will have some explanation

—at least, I hope so—but I have never been able yet to discover one. But, at the time that this letter was written, Mr. Tilton's family had not been broken up; he was living with his family; and although his contract with Mr. Bowen was ended, and his loss of the position of editor had taken place, it was entirely without the influence of the defendant, and therefore furnished no cause and no reason for this great grief which was manifested. But there is one singular fact in this case that I will call your attention to right here, as it comes in appropriately at this point. This letter was written on the First of January, '71: and it is claimed, and has been claimed, that the feeling that produced that letter was brought about by the advice which Mr. Beecher had given Mrs. Tilton to separate from her husband. The point that I wish to call your attention to in this connection is this: that the advice, if ever given at all, was not until after the 27th of January, 1871, as the documentary evidence that we shall introduce before you will conclusively establish. Especially, you have the strange anomaly of the defendant's mourning over wrongs not yet committed, if they were wrongs; over acts not yet done. But let us assume that such advice was given at the time, and that he had counseled Bowen to dismiss Tilton and that Bowen had taken the advice, and that he was responsible for the loss of place on the part of the plaintiff, and that he had attempted to cause a separation on the part of Mrs. Tilton from her husband. Upon what facts did he base his action? You must recollect that, up to this time, Tilton was editor of *The Independent*, a Christian newspaper, a religious paper; that it was the representative Congregational paper of the land; and Mr. Beecher being of that denomination, and a prominent member of it, it was his duty to see, so far as he could—and especially as for many years he himself had been its editor—it was especially his duty to see that no unfit or improper man occupied the position of editor of that paper. And, now, gentlemen, I want you to bear with me while I call your attention to some specific facts right here relative to this point; some of the declarations we shall show you, of the defendant himself. In reference to this matter, he says that the “leaders” that Tilton had written in *The Independent* had aroused a storm of indignation among the Congregationalists of the North-West; and that he had indignantly himself disclaimed all responsibility for the views expressed by Mr. Tilton; in other words, that Tilton's course in that paper was such that he found it necessary to protest against it, and to disavow all connection and all responsibility for the views contained in that paper, as expressed by Tilton. He says that he believed Tilton denied the Divinity of Christ, the inspiration of the Scriptures, and most of the articles of the orthodox faith; while his views as to the sanctity of the marriage relation were undergoing a constant change in the direction of Free Love. He says that Bessie Turner had given him such an account of Tilton's cruelty to his family as to shock him; and, with down-cast look, she said that Tilton had visited her chamber in the night, and sought her consent to his wishes; that he immediately visited Mrs. Tilton at her mother's, and received an account of her home life, and of the despotism of her husband, and of the management of a woman whom he had made housekeeper—it seemed like a nightmare dream to him.



The question was, whether she should go back, or separate forever from her husband. He asked permission to bring his wife to see them—whose judgment in all domestic relations he thought better than his own; and, accordingly, a second visit was made. The result of the interview was that his wife was extremely indignant towards Mr. Tilton, and declared that no consideration on earth would induce her to remain an hour with a man who had treated her with the one hundredth part of the insult and cruelty he had her. Bowen had narrated the affair at Winstead, Connecticut; and, like stories from the North-West, and Chicago, were brought against Tilton, in his own office. "Without doubt," he says, "he believed these allegations; and so did I. The other facts stated seemed to me a full corroboration." He believed, at that time, taking his declarations, that Theodore Tilton had been guilty of promiscuous immoralities. He had declared that he was bankrupt in character and morals; and, add to all this, he knew—assuming his innocence—that on the 30th of December, 1870, he had accused him falsely of one of the most diabolical crimes that he could conceive of, and that he had induced his saintly wife to join in the lie for the destruction of the defendant. And, in view of all these facts before him, he says that he went off into this paroxysm of grief because he had given this advice; and because he had thus counseled Bowen to discharge him from *The Independent*. I ask you, as fathers and as Christian men, that, if in view of these facts he had not given the advice that he says he did, and an hundredfold more emphatic, that he would not have deserved the condemnation of Christendom? If he did give that advice he did what was his bounden duty as a Christian minister to give. If he did thus counsel Bowen, he did that which it was his bounden duty as a Christian minister to do; and he would have been unfit for his high calling had he omitted to have given such advice—had he permitted, from his standpoint, Mr. Tilton to have remained one hour connected with that religious paper, if he could have prevented it, or his wife living with him one hour, if he could have prevented it. Why, gentlemen, think of it for a moment. The defendant here, the greatest preacher of the land, knowing a man then a member of his church to be a libertine, to be a bankrupt in morals and in character, to be everything that is bad, everything that makes a man despicable—think of his bowing down before such a man simply because he had done his duty and done it but tardily at that; because he had advised a separation and counseled dismissal of this libertine, this bankrupt in character and in morals, this free-lover, this bad man; think of his bowing down before him and asking his forgiveness as he asks the forgiveness of his God. No, gentlemen, no; that is not the reason. You know it, I know it, every man in the land knows it. Yet, in view of all these facts, we hear the explanation that "the case as it then appeared to my eyes was strongly against me." What case? How against him? There was a case at that time, if his theory be correct, but that was a case not against him but against the plaintiff, and that case was made out conclusively from his point of view, if it be correct, by Mrs. Tilton, by Bessie Turner, by Henry C. Bowen, by Mr. Tilton's course in *The Independent*, and by the false accusation that he had made against the de-

fendant. That was the case, then, if we are to accept these allegations and these facts, that was the case, then made against Tilton, the plaintiff, and not against the defendant. The case was all in favor of the defendant. If he did what he did do, he was deserving of the thanks of every good man and of every good woman, and if he had done it tenfold more strongly, and vigilantly, and determinedly, than he had, he would have been entitled to still greater thanks. No, gentlemen, that is not the course. Let me call your attention to the facts. Here is this terrible letter, written on the 1st of January, 1870. To whom is it entrusted? To Mr. Moulton, a comparative stranger to him at that time; they had had but two interviews, one was on Friday night, the 30th of December, when Mr. Moulton went to Mr. Beecher's house and said: "Mr. Tilton wants to see you." "It is Friday night; I have got my prayer meeting to attend to, and I cannot go." "But Mr. Tilton wants to see you." He calls a person: "Go and tell so and so to take charge of the prayer meeting," and he goes off with no more explanation than in company with this comparative stranger, abandoning his prayer meeting to other parties. Didn't he know, didn't he suspect? That is the first interview Moulton has with him, when he calls at his house and says that Mr. Tilton wants to see him. Without explanation he abandons his prayer meeting, turns it over to some one else, and goes with Moulton and receives the charge of adultery with Mr. Tilton's wife. The other interview was the night following. When Moulton got the paper back from Mr. Beecher. Those were the two interviews with reference to this matter, and then this letter is intrusted to him in confidence. Why intrusted to him in confidence? Why should it be in confidence if it didn't relate to some secret that he didn't want the world to know? If Moulton, by the possession of that had not become the possessor of some terrible secret, why was it entrusted to him? Gentlemen, do you believe for a moment that had this been any less than the charge we bring Mr. Beecher would not have consulted some of his trusted parishioners and asked their advice as to how to act in the emergency, whatever it was, other than the one we charge and shall prove to you to be true—adultery? Why, he says that there was no man on the globe with whom he could talk on this subject. Strange! What terrible subject is this about which he can talk to but a single man on the globe, and that man not a trusted parishioner of his but a comparative stranger who has become possessed of some secret. He was shut up to every human being. He could not go to his wife: he could not go to his children; he could not go to his brothers and sisters; he could not go to his church. Mr. Moulton was the only person to whom he could talk on this subject. With reference to his advice to Moulton, with reference to his advice for separation, he could go to his wife. He did go to her, because, in those matters he relied upon her judgment, only coinciding with her. What was this terrible subject about which he could talk to no human being on the globe except to this comparative stranger outside of his church? Where was the trusty parishioner of 25 years' association then, who should stand by him in his hour of trouble? No man on earth, no one to whom he could talk on this subject but the one man, Moulton. If the other side can conceive of

any other secret on earth about which a minister of the gospel can not talk with even his wife, or with his brothers and sisters, or with members of his church, I hope it will be revealed upon this trial. On the 30th of December, 1870, Mr. Beecher went forth from Moulton's with the exclamation, "This will kill me." the charge upon him made by Tilton being adultery with his wife. The first communication you have from the defendant to the plaintiff, or for the plaintiff after this charge is made is, "I humble myself before you as I do before my God." A man comes to you and accuses you falsely of an infamous crime, and the next communication you have with him you say, "I humble myself before you as I do before my God, and hope he will put it in your heart to forgive me, to forgive me!" Gentlemen, it is nonsense to argue that point, and I shall not pursue it further. It was not advice either to Mrs. Tilton or counsel to Mr. Bowen; it was something beyond that. When he asks Theodore Tilton's forgiveness, what does he mean? Forgiveness of what? Forgiveness for having received a false accusation? No, forgiveness for a wrong that he had inflicted upon Mr. Tilton, which called for the deepest humiliation and the most absolute contrition that a man could give. "He would have been a better man in my circumstances than I have been." What does that mean, gentlemen? In what circumstances would Mr. Tilton have been a better man than Mr. Beecher? What does he refer to? What terrible thing had Mr. Beecher done that should lead him to exclaim that Theodore Tilton would "have been a better man in my circumstances than I have been." Why? Theodore Tilton was bankrupt in morals and in character, he had been guilty of promiscuous immorality, he was everything that was bad; he was so brutal to his wife that the bare recital shocked Mr. Beecher; he had attempted a gross outrage upon a person in his house. If their theory be true he had done everything that was bad, and yet he says that this man, this libertine, this infidel, would "have been a better man in my circumstances than I have been."

#### MR. BEECHER'S LANGUAGE INTERPRETED.

What circumstance does he mean? What had he done that outweighed all those charges that were brought against Theodore Tilton by the defendant? What led him to exclaim that even this bad man would have been a better man in his circumstances than he was? Oh! yes; it was true. There is not a word in that letter there was not a word uttered by that penitent man on that night that was not true. It was true, and he would have been a better man. What had he done? Why he had debauched the wife of his trusted parishioner, and she a confiding member of his church. He, taking advantage of his position and of his high calling, had debauched that woman. It is true, and he says Theodore Tilton would have been a better man in my circumstances than I have been; he [Tilton] would not have done that—that is what he means. But he will die before anyone else will be inculpated. How was Mrs. Tilton inculpated, and who was it that inculpated her? "She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have." Oh! say the counsel, of course she could not have been guilty of the crime of adultery, and yet he

guiltless. Well, gentlemen, we shall present to you during the progress of this trial, an authority high upon that subject, an authority no less than the defendant himself, who says that by no means does it happen in all cases that the seduced is an accomplice in the crime, but the sufferer. And so here, she is represented, not as guilty, because of the power that was exercised over this confiding child of the church by a strong and powerful will, because she, having implicit faith in him, yields; she is the sufferer, it is not her fault. Such is the meaning of this, "She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have." I have her forgiveness for having thus seduced her, having thus used my high office, having thus used my power and influence over her to get possession of her virtue. I am guilty, she is guiltless, I have asked her forgiveness, I have it to-day. And now I ask that God may put it into the heart of her husband to forgive me as she has forgiven me. Whatever the offense, it is perfectly clear that the defendant is the sinner and that Mrs. Tilton was the sufferer. He says, Mrs. Tilton is "guiltless, sinned against." It was with Mrs. Tilton, not her husband, that the sin was committed. It was some offense in which there was guilt, sin. She was bearing the transgressions of another. Somebody had been guilty of transgressions with her, which she, not her husband, had to bear. The only question is, Who was the transgressor? Hear the answer, "Her forgiveness I have"—I am the transgressor. He declares that he is forgiven for sin and transgression and guilt with Mrs. Tilton. Can there be anything plainer than this? Is it necessary that we should attempt to argue or present a proposition so clear and unmistakable as this? She is guiltless, sinned against—I have sinned against her. She is bearing the transgressions of another. I am the transgressor, and her forgiveness I have. "She has forgiven me for sin, for transgression and for guilt, and now will God put it into the heart of her husband to forgive me also for the sin, for this transgression, of which I have been guilty."

It cannot be said, gentlemen—and that is the only possible explanation which I could see to this—it cannot be said that the defendant in this case does not understand the meaning of the English language, that he did not know what he was talking about when he wrote these words of repentance and contrition—when he was pouring out the honest feelings of his heart and his heart's sorrow for the great wrong that he had done. No, he fully understood the import of every word that he uttered on the first of January, 1871. "I have trusted this to Moulton in confidence." Why give this to Moulton in confidence? Why should this confidence be reposed in him about a matter relating to business or mere advice in regard to family jars? No, it was the secret—the secret that he said would kill him on the night of the 30th of December, when he left the house of Mr. Moulton to go to the sick bed of this woman that he had debauched. Had Mr. Moulton been, on that night, the bearer from Mr. Beecher of a similar letter, had he come to Mr. Beecher and said, "Mr. Beecher, here is a letter I have brought you from Tilton, a letter of regret, a letter of sorrow, a letter of contrition, and he asks your forgiveness for what he did to you on the 30th of December, two nights ago. I have come to ask your pardon?"



no, nothing of the kind, but Mr. Beecher falls down upon his knees before this man and commences his letter with an appeal to him, and closes with a prayer to God that he may soften his heart toward the man who has wrought this great ruin in his family.

The Court here took a recess of an hour.

Judge Neilson cautioned the jury as usual. The following are his words:

Gentlemen of the Jury, we are about to adjourn to two o'clock: I need not repeat to you the injunction already given. You will find it difficult perhaps to carry out that direction, but avoid conversing about it, or allowing any one to speak to you on the subject.

Judge Neilson—Those gentlemen behind the jury will please retire, and pass out. I don't wish the jury to hear any incidental conversation.

The men crowded back into the throng around the railing.

Judge Neilson—Mr. Spaulding, will you take this jury down by and by to Parker's, to a lunch. I will write a note. They will have a lunch there in a separate apartment.

Officer Spaulding departed with the jury, as directed, and the Court broke up for the recess.

The Court again convened promptly at 2 o'clock, and Mr. Morris resumed his argument as follows:

GENTLEMEN OF THE JURY: Men usually exhibit various emotions in proportion to the cause that gives rise to those emotions. If fear, the danger that is foreseen; if grief, the trouble that has produced it; and so of the various emotions. And I was about, before closing the point to which I called your attention this morning, to call your attention to that phase of this branch of the case in order that you might see what perfect harmony there was between this letter that I have called your attention to, and the condition of the party's mind, as portrayed by himself that time; and for the further purpose of showing that it was impossible that that condition should have been produced or caused by any slight or trivial matter; that it had for its foundation some terrible thing, whatever it was; that the defendant, at the time that that letter was written must have been conscious of having committed some terrible wrong, and it was for that purpose that I was about calling your attention to some declarations, and I now invite your attention to them, so that you may see what perfect unison there is between the condition of the writer's mind and the letter itself.

"Believing that my presence, exclamations and counsels had tended to produce a social catastrophe, I gave expression to my feelings in an interview with a mutual friend, not in bold and incautious words, but eagerly taking the blame upon myself, and pouring out my heart to my friend in the strongest language, overburdened with the exaggeration of impassioned sorrow. It seemed to me that my life-work was to end abruptly and in disaster. I was most intensely excited indeed. I felt that my mind was in danger of giving way. I walked up and down the room pouring forth my heart in the most unrestrained grief and bitterness of self-accusation, heaping all the blame on my own head. I shed tears, and my voice broke and my distress was boundless, and I called

upon the man that I had wronged to forgive the great wrong that I had done."

You see, gentlemen, what perfect harmony there is. Take the letter of contrition, break it up into sentences, intersperse it with the language that I have just quoted, and you would not perceive which part was the letter and which part the language that I have quoted. It would sound as one outpouring of the heart, as he says, of "impassioned sorrow and grief." And yet, you are to be told that all this anguish and all this sorrow was the result of some trivial matter. Certainly, gentlemen, after the evidence in this case is in, I apprehend that it will not be claimed. I apprehend that we have heard the last forever of the intimation that all this grew out of a fear of a false accusation. If such had been the case the great grief here expressed would have been somewhat modified by the consciousness that this great wrong had been done the party thus pouring out his heart. But, gentlemen, this letter of the contrition is the one bright spot in this whole sad story. It is the honest expression of sorrow and grief. It is the outpouring of the heart for the wrong that has been done, and the ruin that has been wrought; and if it could be repudiated, I say no, a thousand times no, it ought not to be. It is the expression of grief and sorrow and contrition for the wrong that had been wrought. Let it stand, as it will stand now and forever, as the honest confession of guilt on the part of this defendant in this case.

#### INFERENCES FROM MR. BEECHER'S ACTS.

Well, gentlemen, having called your attention very briefly and very imperfectly to the first stage in the history of this extraordinary case, as throwing a light back, reflecting upon the three or four days that had just passed in which was encompassed so much of grief and of sorrow, let us see what the first act of the defendant is in reference to this matter—what is the first thing he does in reference to this matter, after the writing of this letter of contrition, of January 1, 1871?

Let us see whether he acted as a guilty man would naturally act, or whether he acted as an innocent man would naturally have acted under the circumstances. Assuming now for the moment that a false accusation had been made against him, what would he have done? After reflection would he not have gone to some person of whom he could have taken advice, would not he have sought out some trusty member of his congregation, some legal gentleman of his flock, and have told them, as he might have done in the sacredness of confidence, what wrong had been committed against him, and counseled and advised with them as to what should have been done with such a villain? And do you think, if he had been innocent, that would not have been the course? But what does he do? Well, he acts as naturally he would after having committed the wrong that we charge him with. He says: "I have sent this letter of contrition to Mr. Tilton. I have poured out my soul to him in sorrow and in grief, and I have asked his pardon and forgiveness, but I will do more for him. I have had an interview with Mr. Henry C. Bowdoin, to whom I have made some statements concerning Mr. Tilton. I will at once undo that." And so, on the 2d of January he

writes a letter to Mr. Bowen, in which he says: "I should be unwilling to have anything I said, though it was but little, weigh on your mind in a matter so important to his welfare."

Mr. Beech—What is the date of that?

Mr. Morris—January 2, 1871. The very next day after writing this letter of contrition, two days after they say this false accusation had been made, he is writing to Mr. Bowen, so anxious is he for the welfare of Mr. Theodore Tilton, the man who had made this false charge against him; and although he said but little to Mr. Bowen, "I would be unwilling that that little should weigh on your mind in a matter of such importance to his welfare." With this letter, with the original draft of this letter, he goes around to Mr. Moulton, and there he meets Mr. Tilton, on the 3d of January—the first being on Sunday and the second being observed as the 1st—on Tuesday he goes around to Mr. Moulton with this letter and meets Mr. Tilton there and then he speaks to him about this matter and expresses his sorrow at the wrong that he had done him, and hopes that it may be overlooked and that he may be forgiven. The object of this letter, you will perceive, gentlemen, was to further placate, if possible, Mr. Tilton; to show him that he was willing to aid him and assist him, that he was anxious to do anything that he could for him. He writes this letter and he says, when he wants to give force to the letter of contrition: "I should be unwilling to have anything I said, though it was but little, weigh on your mind," but on another occasion when it is desired that the force of the letter of contrition shall be broken by some wrong done on the part of the defendant, rather than the wrong that we aver, different, entirely different, language is used. Then he conversed for some time with Mr. Bowen. Mr. Bowen wishing his opinion, it was frankly given: "I did not see how he could maintain his relations with Mr. Tilton. The substance of the conversation was, that Tilton's inordinate vanity, his fatal facility for blundering, for which he had a genius, the ostentatious independence of his own opinions, and general impracticableness, would keep *The Union* at disagreement with the political party for whose service it was published. Now, added to all this, these revelations of these promiscuous immoralities would make his connection with either paper fatal to its interests. I spoke strongly and emphatically. I have no doubt that my influence was decisive and precipitated his overthrow." Then he is accounting for the condition of mind at the time the letter of contrition was written, and when force is to be given to the apology, then "I should be unwilling to have anything I said, though it was but little, weigh on your mind." But a few days after this, Mr. Beecher, through Mr. Moulton, makes the proposition that if Mr. Tilton will go to Europe with his family and spend a couple of years there that he will bear the expense. At this time, also, Bessie Turner, of whom you have heard, a young woman in the house of Mr. Tilton, had overheard conversations between Mr. and Mrs. Tilton with reference to this matter, and it was deemed prudent that she should be gotten out of the way; it was not safe to have her here in Brooklyn; it was feared she might tattle, that she might talk, and thus the secret become known, and so she is sent to a boarding school in Ohio and the expenses of her education are paid there by the defend-

ant in this action. He contributes out of his own money the expenses of Bessie Turner when she is at school in Ohio, and we want them to explain, if they can, why Mr. Beecher paid the expenses of Bessie Turner at school in Ohio. We say, gentlemen, it was because she had overheard conversations, had become possessed of some facts, and there was fear of her tattling. It was dangerous to have her here. That is the reason that it was desired and desirable that she should be removed from this city, and she was sent to Ohio, the defendant paying her expenses.

And right here, gentlemen, I will call your attention to another fact, although it is out of the order of date, but it is connected with the same topic. Mr. Beecher mortgaged his own house, raising the sum of \$5,000, which he paid to Mr. Moulton for the purpose of being paid to Mr. Tilton without Mr. Tilton's knowledge of where it came from. Mr. Tilton was the editor of *The Golden Age*. Mr. Moulton, his friend, was assisting him in raising money, had repeatedly assisted him in moneyed affairs, and Mr. Beecher, feeling the great wrong that he had done Mr. Tilton, and being desirous of having him, at least so far as worldly concerns went, satisfied, and his paper to go along prosperously, desired Mr. Moulton to be the medium of transmitting this money to Mr. Tilton without his knowledge of from whence it came; and this money was paid to Mr. Moulton by Mr. Beecher for Mr. Tilton's benefit. Will you tell me, gentlemen, that an innocent man, possessing the power and the influence that Mr. Beecher possessed in this community, will mortgage his own house to raise money to pay to a man unless he be guilty of some great wrong? No, gentlemen, that money was raised and that money was paid for the express purpose of keeping *The Golden Age* prosperous. So long, he thought, as Mr. Tilton was prosperous, at least the sharp edge of his anguish would be dulled—that he would not be so likely to expose the matter if he was pecuniarily prosperous; but if, added to all his sorrow at home, if, added to this great wrong, poverty should stare him in the face, and he should be pecuniarily embarrassed, he might, writhing under the great wrong that he had suffered—he might be more likely to expose the wrong. And thus it was that this money was paid, paid for the express purpose of keeping him along, and as a means of preventing the exposure of this secret to the public. It was one of the means adopted by him as having a tendency to prevent its exposure, to keep Mr. Tilton partially satisfied, so that he might not be entirely and all the time brooding over the wrong that he had suffered, but that he might be engaged in writing for his paper, conducting his paper, carrying his paper along, which he could not do unless he had the means, and when his mind was upon that enterprise it would be to that extent withdrawn from the great sorrow that he was suffering at that time in consequence of this wrong, and that is the reason that this \$5,000 was raised upon a mortgage upon his own house. And, gentlemen, men do not mortgage their houses, they do not raise money and give it to parties in this way if they are entirely innocent, nor do they do it for any trivial offense. There may be cases where parties innocent entirely have paid money in this way. I never have heard of one in my experience. I doubt whether any instance



can be given where money has been paid under such circumstances where the parties were innocent of all blame. They may not have gone so far as had the defendant in this case, but in every case that I have heard of, the money has been paid because as matter of fact parties were compromised. But, in this case, gentlemen, there will be no insinuation of that character. The evidence upon that point is too full, too clear, and too complete. That suggestion will be dropped here, as it has been by the previous investigation, and you will hear nothing of that in this case, as I will pass from that point.

#### MRS. MORSE'S LETTER.

On the 27th of this month, January—I am speaking now of the period between January the 1st and February the 7th—Mr. Beecher receives from Mrs. Morse and takes to Mr. Moulton as bearing upon this case and upon the matter in secret which he had in charge, a remarkable letter from Mrs. Morse, and I will call your attention to but one or two passages of it at this time :

“ This she could endure and thrive under, but the publicity that he has given to this recent and most crushing of all troubles is what is taking the life out of her. I know of twelve persons whom he has told, and they in turn have told others. Do you know when I hear of you cracking your jokes from Sunday to Sunday, and think of the misery you have brought upon us, I think with the Psalmist, There is no God. He swears as soon as her breath leaves her body he will make this whole thing public, and this prospect, I think, is one thing which keeps her alive.”

This letter was received on January 27, and taken to Mrs. Moulton on January the 28th, with Mr. Beecher's indorsement to it, together with another letter which he had received from Mrs. Morse, and which had been written to Mrs. Morse by Mrs. Tilton, and which was also taken there as having reference and relating to a part of this case, and the secret which Mr. Moulton at that time had in charge. I will not stop to read that letter now, gentlemen. I will call your attention to but a few brief passages in the letter in order that you may see to what it has reference :

“ When by your threats my mother cried out in agony to me, ‘ Why what have you done, Elizabeth, my child ? ’ her worst suspicions were aroused, and I laid bare my heart then, that from my lips and not yours she might receive the dagger into her heart. Did not my dear child, Florence, learn enough by insinuation, with her sweet, pure soul agonized in secret until she broke out with the dreadful question ? I know not but it hath been her death blow. After this you are her indignant champion, are you ? It is now too late. You have blackened my character, and it is for my loved ones that I suffer, yea, for the agony which the revelation has caused you, my cries ascend to Heaven night and day, that upon mine own head the anguish may fall. Once again I implore you for your children's sake, to whom you have a duty in this matter, that my past may be buried. Dear mother, I will now add a line to you. I should mourn greatly if my life was to be made known to father. His head would be bowed indeed to the grave.”

And so all through from the beginning to the end is the confession of her guilty relations with the defendant, and he takes this letter to Mr. Moulton, as relating to the secret which he then had in charge. Do you doubt what these parties have

been talking about ? Do you doubt what the secret is, and what the crime is that has been committed in view of these facts ? Mrs. Tilton has confessed her guilt, first to her husband, then to her mother. Mrs. Morse is writing to the defendant about it as though he understood it, and Mr. Beecher has confessed it, as we say, in writing over and over again, and verbally to Mr. Tilton, the plaintiff, to Mr. Moulton, and to another.

#### THE SCANDAL CORRESPONDENCE.

And now, gentlemen, having called your attention to these facts, occurring subsequent to the 1st of January, when this letter of contrition was written; the fact of the letter to Bowen; his sending away Bessie Turner to boarding-school; his endeavor to have Tilton and his family go to Europe, and he pay his expenses; the letter of Mrs. Morse to him, and of Mrs. Tilton to Mrs. Morse, carried by him to Mr. Moulton, we come now to another period in the history of this case, and about which, gentlemen, there can be no two opinions. Mr. Beecher, as naturally might have been expected, was very anxious to know what the state of Mr. Tilton's feeling toward him was. He had written the letter of contrition, he had written to Bowen, he had received through Mr. Moulton the letter of assurance that Mr. Tilton would not expose his secret, because of the great love that he bore his family, but with this fact pressing upon his mind, with his anxiety lest at any moment Mr. Tilton might break out and expose the guilty secret, he was very anxious to know what was the condition of his mind. To write to him he could not; the wound that he had given was too deep. He must seek the state of his mind by consulting others, and he had chosen Mr. Moulton as his mutual friend; to him he had confided, and to him he must go to ascertain whether he stood upon a precipice or not. And so, upon the 7th of February, Mr. Moulton said to Mr. Tilton, “ Mr. Beecher is anxious that I should get from you an expression of your feeling toward him.” And Mr. Tilton writes a letter for Mr. Beecher, and I desire to call your attention to the significance of that letter in this place, and to show you that Mr. Tilton was actuated in bearing this wrong and this suffering by the undying love which he bore his children; that they it was that restrained him from inflicting the punishment that was due to his destroyer at the time; for their sakes, for the sake of the innocent who were involved in this matter, not only his own family, but others, yea, the family of the defendant and himself, he forbore to strike; and when appealed to by Mr. Moulton to give some expression of his feeling towards Mr. Beecher, in order that he might reassure him that Mr. Tilton did not intend to expose this secret, that he did not intend to strike, but had consented to spare, he wrote this significant letter, a portion only of which I will read :

“ I say, therefore, very cheerfully, that notwithstanding the great suffering which he has caused to Elizabeth and myself, I bear him no malice, shall do him no wrong, shall discountenance every project by whomsoever proposed for any exposure of his secret to the public. I ought to add that your own good offices in this case have led me to a higher moral feeling than I might otherwise have reached. Yours, &c.”

Mr. Evans—That is to Moulton ?

Mr. Morris—That is a letter to Moulton written at Mr. Beecher's request, and shown to Mr. Beecher for the purpose of reassuring him that Mr. Tilton did not intend to expose this great secret, and he says there that he will discountenance any project by whomsoever made for the exposure of the secret—of Mr. Beecher's great secret—"notwithstanding the great wrong that he has done to Elizabeth and myself." Well, gentlemen, on the same day the defendant writes two letters, and the writing is as plain and unmistakable as the writing upon the wall. There is no mistake about what the party is writing. There is no mistake as to the wrong of which he speaks. There is no mistake as to the crime which he has committed. February the 7th, mark you, now, gentlemen, while Mr. Tilton had forbore to strike, while he had agreed not to expose the secret of Mr. Beecher, the wrong that had been done his family, there was no reconciliation at this time. There was no forgiveness, as is apparent in Mr. Beecher's letter. Mr. Tilton had simply forbore to strike because in striking he must necessarily strike his own family and bury them in the common ruin. This is written to Mr. Moulton:

"I am glad to send you a book which you will relish, or which a man on a sick bed ought to relish."

Mr. Moulton at this time was sick, confined to his house, and almost daily Mr. Beecher visited him at his house, sometimes twice a day, counseling him with reference to this matter, endeavoring to take some means, adopt measures, that would secure the burying of this secret from the public.

"I wish I had more like it that I could send you one every day, not as a repayment for your great kindness to me, for that can never be repaid, not even my love, which I give you freely. My trust in you is implicit. You have also proved yourself Theodore's friend and Elizabeth's. Does God look down from Heaven on three unhappy creatures that more need a friend than these? Is it not an intimation of God's intended mercy to all that each one of these has in you a friend? But only in you are we three united. Would to God, who orders all hearts, that by your kind intimation Theodore, Elizabeth and I could be made friends again. Theodore will have the hardest task in such a case, but has he not proved himself capable of the noblest things?"

"Theodore will have the hardest task in that case, but has he not proved himself capable of the noblest things?" Why would Theodore have the hardest task? Why should it be harder for him? So far as Mr. Beecher and Mrs. Tilton were concerned, there was no difficulty. Reconciliation, as between them, was easy. But Theodore would have the hardest task. Why should he have the hardest task? Why, because it was against him and against his household that this great wrong had been committed. "True, he would have the hardest task in such a case, but has he not proved himself capable of the noblest things?" What noble thing had Mr. Tilton done from the 30th of December, 1870, till the 7th of February, 1871? What noble thing had he done that he should call out this encomium upon his nobility? What had he done? Why, he *had* done a noble thing. He had shown himself capable of the noblest things. In what respect, and why, and how? Why, because knowing of the crime which had been committed against him, knowing the

desolation which had been brought upon his household, he *forbore* to strike down the assassin of his home and of his happiness. Ah! he had forbore more than that, gentlemen. Not only had he forbore to strike down the assassin of his home and his happiness, but, for the sake of his family, for the sake of his children, he had forbore to expose the man to the scorn of the world. I hope they will be able to explain what this language means if it does not mean what I have attributed to it. Certainly thus far no explanation has been vouchsafed, because it was all a muddle, as he could not recall the precise workings of his mind. You, gentlemen, will have no difficulty in recalling the precise workings of his mind when he wrote this letter, and when he wrote in these words: "He will have the hardest task in such a case." Indeed it would be a hard task. It would be rather too much to expect of human nature, a man against whom such a wrong as that had been committed, to expect friendship; but few in the world have been able to rise to that plane of divine forgiveness, and when men do stay the hand against the destroyer of a home, when they do forbear to strike down the seducer who has destroyed that home, they are held up to ignominy because of the exercise of those noble attributes, as has been done in this case; but, thank God, we are in a tribunal where it will not be available any more. "I wonder if Elizabeth knows how generously he has carried himself toward me?" In what had this generosity consisted? I will explain it to you. When he speaks of the generosity with which he had carried himself towards him, he refers to the same facts as when he said; "Has he not proved himself capable of the noblest things?" Of course it means that. It cannot mean anything else, because, prior to the 30th of December, 1870, he had declared him to be bankrupt in character, utterly worthless, but it was no noble act that he had done prior to that of which he speaks, but it was generous, forbearing and noble acts after the 30th of December and prior to the 7th of February, 1871; and I ask you, again, what had he done during that time save to stay his hand and not to cast off his wife, and not to expose the destroyer of his home to the scorn and to the just punishment that would follow such an exposure on the part of a virtuous and Christian community? This man that was everything that was bad on the 30th of December, or on the 27th of December, all at once is transformed into a perfect man, capable of the noblest things, generous beyond expression, and the only one act other than those that I have indicated that he did during that period was to charge the defendant to his face with having seduced his wife, and brought ruin upon his own home. And for this charge of seduction and debauchery of the wife, and the desolation of the home, called a perfect man, generous beyond expression, capable of the noblest things. Explain it, if you can, upon any other theory than that which I have presented. Explain it, if you can. If to falsely charge a man with the most diabolical crime known, the most infamous crime, and that man a minister of the Gospel,—if to accuse such a man. I say, of such a crime falsely, is to transform a man from a brute, a libertine and a bankrupt into a perfect man, capable of the noblest things, generous beyond expression,—if such an act is capable of thus transforming a man, then there is some sense in



the language upon the theory of the defense; otherwise not. No, gentlemen, "of course I can never speak to you again without his permission." Why not? Why not? Why, because at some time or other, at some indefinite period that cannot be stated, in some indefinite way that cannot be explained, Mr. Tilton had sent word to him that he should never enter the house again. If that word had been sent, why should he never enter the house again? What had occurred between these parties, these men who for so many years had loved and admired each other, the devoted friends, pastor and parishioner, what I say had occurred that he should forbid him ever to enter the house again? But, with that explanation, one reads:

"Would to God we three could be made friends again. Theodore would have the hardest task in such a case, but has he not shown himself capable of the noblest things? Yet he has forbidden me ever to enter his house again, and that is the reason I cannot go."

One word, gentlemen, explains all this language; every act of the defendant for the four years; every act of Mr. Moulton in connection with this; every act of all the parties perfectly explain, and all harmonize, by just using this one word—"adultery." Take "adultery" out of it and there is not as much harmony in their letters, in their acts, as you would find in a lunatic asylum.

But he writes another letter on the same day to Mrs. Tilton, and he writes this letter, as he says, by the permission of Mr. Tilton, and he requests the return of this letter by the hands of her husband, Theodore Tilton, the plaintiff. Now mark you, gentlemen, he writes this letter to Mrs. Tilton by permission of her husband, and he requests the return of it by his hands; that is, he asks permission of the man who had made a false accusation against him to write to his wife, and then wrote such a letter, and requests its return by the man who had thus made a false charge.

"When I saw you last I did not expect ever to see you again, to be alive many days. God was kinder to me than were my own thoughts."

When did he see her last? When had he seen her last? On the night of the 30th of December, 1870, he had seen her upon the sick bed; it was the night that this terrible charge was made against him. The fact of its discovery had been for the first time communicated to him, and as he left the house where it was communicated he says: "This will kill me," and he goes forth, as he said, amidst the storm. Then is when he saw her. "I did not expect to see you again, or be alive many days. God was kinder to me than were my own thoughts." What were his thoughts? What were his thoughts, and why did he never expect to see her again? What were his thoughts? Why, when this news, the fact of the discovery of this crime, had been communicated to him, it came upon him like a stroke of lightning. Well might he exclaim: "I was thunderstruck; it came upon me like a stroke of lightning." He saw then the consequences of the discovery of such a crime; he saw an indignant world denouncing the seducer, and that man a Christian minister, and, he supposed, he didn't believe he could endure the agony such a discovery would make, and he had made up his mind to end his sufferings, and to end his misery by taking his own life. Explain it upon any

other theory, if you can. God was kinder to him than were his own thoughts.

"The friend whom God sent to me, Mr. Moulton, has proved, above all friends that ever I had, able and willing to help me in this terrible emergency of my life. His hand it was that tied up the storm that was ready to burst upon our heads; his hand it was that tied up the storm that was ready to burst on our heads, on my head, and on the head of my victim."

He had tied up the storm. How had he tied up the storm? Why, he had appealed to Mr. Tilton in consequence, and for the sake of his family, for his children, and for the thousands that would be affected by such an exposure, he had induced him to forbear and not to expose this secret. That was the way the storm had been tied up by the hands of Moulton, whom he says God had sent to him in this terrible emergency of his life. Explain it by any other hypothesis if you can. But if the theory be true, just at that particular time, it was an emergency in Mr. Tilton's life, and not in the defendant's. He had lost his place. All that Mr. Beecher had done was to give a little advice. What was the emergency in his life that was so terrific that he contemplated destroying his life, and would, only for Moulton's interposition, whom God had sent him in this terrible emergency of his life? and you will see in every letter, and in every act during the entire four years of concealment, of planning and of plotting; every successful movement that has been made to keep from the public the truth, is attributed to God, and every step that looks like an exposure or tends to expose the truth to the world, is attributed to the devil. "He" (Moulton) "will be a true friend to your honor. Will you return it to me by his hands? I am very earnest in this wish for all our sakes, as such a letter ought not to be subject to even a chance of miscarriage." What does the letter refer to? What is he talking about in this letter that makes it so important to "all of us" that its contents should not be subject to the chance of miscarriage—that it should not come to the public? What are they talking about? What is the defendant talking about in this letter that makes it of such paramount importance that this statement should be returned to him, and by the hand of Mr. Moulton, so that there should be no possibility of its falling into other hands and its contents becoming known? What is he talking about? What does he refer to? What crime has it reference to? Some terrible thing—something so terrible that it induced him to contemplate the taking of his own life until God sent him Moulton, who tied up the storm that was about to burst on the heads of the seducer and the seduced. In this same letter he says: "You have no friend, Theodore excepted, who can so serve you as Moulton." Why should he thus speak of Theodore? "No friend except Theodore." Theodore is your best friend—the best friend you have in the world; and yet, but a short time before that the story of Theodore's treatment of his wife, as related by Bessie Turner, shocked him, and as related by the wife herself, seemed to him like a nightmare dream. Were there ever such changes in the transposition of opinion with reference to mortal man as this case exhibits in the defendant toward the plaintiff? And all because on the 30th of December, 1870, the plaintiff had

falsely accused the defendant of one of the most damnable crimes to be charged against a person! "He will be a true friend to her honor." Her honor was involved, and the fact that involved her honor was known to Moulton. This letter indicates that fact, that Moulton, at that time, knew all about it. She knew that he did. He is writing to her, giving her courage,—"Moulton will be a true friend to her honor." Her honor was involved, and Mr. Moulton had charge of the secret, the exposure of which would destroy her honor. How had her honor been involved? Who had involved it? "The past is ended, but is there no wiser, higher, holier future? May not Moulton be the priest in the sanctuary of reconciliation?" What does all this mean, gentlemen? Tell me what it means. Take those letters without knowing anything of the case, or without knowing anything of the parties, each letter without signature or date, and what would you say the parties were talking about? Why the one sin of adultery, not to be named in their correspondence, except in the manner in which it is named, and it is named, to common intelligence, as plain as though "adultery" ran through every letter and was incorporated in every sentence of this correspondence for three or four years.

#### THE CLANDESTINE CORRESPONDENCE.

Now I call your attention to a circumstance, as throwing light upon this transaction that occurred at this period, during this month, that sets at rest forever the fact that Mr. Moulton had in charge facts and secrets relating to the defendant's moral character, that Moulton was intrusted by him with the management of these facts, and that they related to his moral delinquency. On the 18th of February, 1871, Mr. Dana sent a note to Mr. Bonner, including a printed slip, referring to these delinquencies, threatening its publication, and Mr. Bonner immediately transmits them to Mr. Beecher, with a letter marked "strictly confidential," and they are taken immediately to Moulton, this letter of Mr. Bonner, and the note of Mr. Dana, and the slip, although marked "strictly confidential," and its return requested; they are taken to Mr. Moulton and put in his hands to manage the case. And Mr. Beecher takes Mr. Moulton over and introduces him to Mr. Bowen, retiring and leaving Mr. Moulton there to explain this matter, and on that occasion Mr. Moulton succeeded again in throwing off, to a certain extent, the suspicion, by denying the truth of the charge, and for that he is to be condemned? It met Mr. Beecher's approval then, and called down upon Moulton's head his blessings for four years, Sundays and week days, and on this occasion it succeeded again. Shall he be condemned because he denied the truth? Or shall you disbelieve him because he denied the truth? Oh! no. When Mr. Moulton was denying the truth of these charges, he was then a messenger sent from God. When he tells, under the solemnity in his obligation, the truth, he is a vicergerent of hell.

Well, gentlemen, I come now to consider another period in this case, running from February 7th to the 2d of April, 1872. As a part of this arrangement to keep the secret from the public, it had been agreed that neither Mr. Beecher should

write to Mrs. Tilton, or she to him, without the knowledge of Mr. Moulton; that they should have no communication with each other without his permission, and you will see by the letter of February 7th, Mr. Beecher says that it is written by permission, and that he can never speak to her again without Theodore's permission, and therefore it becomes important to ascertain what relations these parties assume to each other after that period. The matter seemed to have been reasonably settled. Theodore had written this letter of February 7th. Mr. Beecher had written to Moulton, and he had written to Mrs. Tilton, and there seemed to be a prospect that this secret would for ever be buried, and it inspired a feeling of security on the part of the defendant; and, as a consequence of that, a clandestine correspondence ensued between him and the woman whom he had debauched, and the first letter upon that subject was written to him March 8th, in which she says "My dear Friend: Does your heart bound towards all as it used? So does mine." I will not stop to read the whole of these letters. I will only call your attention to the ideas contained in them. Mr. Beecher replies, and I will read but a sentence or two of this letter:

"If it would be a comfort to you now and then to send me a letter of true inwardness, the outcoming of your inner heart, it would be safe, for I am now at home with my sister, and it is permitted to you."

Bear in mind, gentlemen, that when this letter was written, this is the first communication, so far as we know, that Mr. Beecher has with Mrs. Tilton after the letter of February 7th, which was written for Mr. Tilton to see, but the first private letter he writes her, or correspondence between him and Mrs. Tilton, and this, bear in mind, is long after Mrs. Tilton has written her confession, after she wrote her retraction, and after she had written the letter and it had been known to Mr. Beecher, in which she speaks of a letter he obtained as having been obtained by his dictation. Not a word. She had falsely accused him of this infamous crime. She had retracted and re-retracted, taken back and re-asserted, and in the first communication that they have upon the subject there is no allusion made to all this that has passed. No reference to it whatever on either side. Think of it, gentlemen, think of it. A woman accuses you falsely, makes a false charge against you, makes a false confession to her husband, reiterates that, and you write her a letter requesting her to communicate with you, giving the reasons why it will be safe for her to do it, and in this first correspondence there is no allusion made to what has transpired; there is no reference made to it; there is no explanation asked from the lady why she had made such a charge; how she could have made such a charge, knowing it to be false; how she could make such a charge, and then, having retracted, how she reiterates it again, and makes the additional false charge that he had extorted it from her. Not a word, no reply; but just such correspondence as you would expect between a married man and a married woman not his wife, if improper relations existed between them. Bad enough for any married man to write such a letter as that to a married woman not his wife under any circumstances. Bad enough; but think of a minister of the Gospel holding such correspondence, under the circumstances of this letter, and no allusion what-



ever made to the fact as to what had transpired prior to this! If it is in the power of man to explain it, consistent with innocence, I should be glad to hear the explanation. I want to hear that explanation. If it is in the power of man to explain it, consistent with innocence, I want to hear it; you want to hear it. I aver that it is not. But, gentlemen, if there could be any possibility of misapprehending the meaning of this correspondence, there was a little note accompanying this, which I think leaves no doubt upon the subject:

“MY DEAR MRS. TILTON: If I don't see you to-morrow night, I will next Friday. I will be gone all the forepart of next week. Truly yours, H. W. B.”

Why, I ask, if there was no improper relation between these parties after he took the pains to inform her that she might write him now, because it is safe; and it is safe because he is home alone with his sister? Why was it not safe if he expected a proper correspondence with a Christian woman, one of his own parishioners? Why does he take the trouble to inform her that it is safe to do it then, because then he is home there with his sister! And after the scenes of the few months prior, after the agony that he had gone through on the 30th of December, when he says in his letter of February 7th he never expected to see her again, or be alive many days, that he could never speak with her again without her husband's permission, and he didn't know then whether it would be prudent or proper, or not, without the knowledge of that husband, and without the knowledge of the man whom God had sent him, and to whom he had trusted the secret—he writes such a letter to a woman who had accused him with having improper relations with her, and then, in such a letter, putting in a slip making an appointment for a meeting. Gentlemen, we expect in this case to be judged by the same rules that you judge other men by. We expect in this case that you will judge the defendant by the same rules that you yourselves would be judged by, the same rules that you would judge other men by. We do not expect that in this case you will say that because he is a great man, because he has a great name, and that his fame extends throughout the land, that you will withdraw him in considering this case from the ordinary rules that you would apply to other men. Why, if any one of you should be caught in such a correspondence as that with another man's wife, upon that alone, without anything else, you would be pronounced an adulterer. That would be the judgment of your fellow-man, and it would be a righteous judgment. Mark you, gentlemen, this letter, too, is written by the man who says on the 1st of January, 1871, that he so blamed himself because he believed that his counsels had tended to produce social unhappiness, because he had been the cause of all the ruin and all the desolation. He was then in paroxysms of grief from the ruin that he believed himself, though unconsciously, he says, to have been the cause of. A home well nigh ruined and desolated by his confessed acts; and yet, writing to that woman, the mother, the head of that home, such a letter as that, without asking any explanation, without giving any explanation, without so

much as making allusion to all this that had preceded, that had so frenzied him, that had driven him almost mad, in fear of losing his mind—to indite such a letter as that under such circumstances, and he writes it as though nothing had ever occurred between them, on the contrary, she saying, “Does your heart bound towards all as it used? So does mine.” “If you want to write it is safe now; you can do it. I am alone here with my sister, and it is permitted to you to do it. If I do not see you to-morrow night, I will on Friday; I am going away and cannot be there before.” If that was you, gentlemen, any man on that jury, what do you think would be said of you by your neighbors? The knowledge of this fact alone, stripped of every other consideration, stripped of every other fact, what would be the judgment of mankind upon such acts? Well, gentlemen, the very circumstance and fact that there was this clandestine correspondence, under the circumstances, is strong evidence that there had been an improper intimacy between these parties, because if there had been an improper intimacy between these parties—with a knowledge on his part, as he says, that his counsel, his presence, had tended to produce this sorrow and this grief in the family, he would have been very careful before he would have renewed that intimacy. Certainly. Why, he had been forbidden, you recollect, ever to enter the house again; had been forbidden ever to speak to her again, and could not speak to her, and could not come to the house, and yet he says he will be there. He writes to her and reviews this intimacy clandestinely, without the knowledge of the husband, without the knowledge of the man to whom this secret had been confided. But that is not all; she writes another letter to him, in which she undertakes to frame excuses for having confessed, for having communicated the fact to her husband. The date of this is May 3d, 1871.

Mr. Evarts—What is this other one, Mr. Morris?

Mr. Morris—March 8th, 1871.

Mr. Shearman—There is no date to that.

Mr. Morris—No; but it is dated by other circumstances. We will show the date to be as given.

Mr. Evarts—But there is no date on it.

Mr. Morris—Of course, there is no date on; but we say it is March 8th, 1871.

Mr. Evarts—This one that you are now going to read is May 3, 1871?

Mr. Morris—May 3, 1871. That is the letter from Mrs. Tilton. The letter from Mr. Beecher was later. I bring it in in this connection, because it is upon the same subject. It is dated January 20, 1872, and I will read but a small portion of this.

Mr. Beach—Are you going to read the letter of May 3, 1871? You have read March 8th, but May 3 you alluded to.

Mr. Morris—I read portions of that only.

Mr. Beach—You have not read May 3.

Mr. Morris—Oh, no, [reading]: “My future, either for life or death, would be happier could I but feel that you forgive, while you forget, me. In all the sad complications of the past year my endeavour was to entirely keep from you all suffering, to bear, myself alone, leaving you forever ignorant of it. My wea-

pons were love, a large untiring generosity and nest-hiding. That I failed utterly we both know, but now I ask forgiveness."

As I say, gentlemen, the letter refers, as we claim—and it will, I think, be made manifest—to the fact that she had confessed this crime to her husband, and that she now asks his forgiveness for having made that confession to her husband. In his letter of January, 1872, the latter clause reads as follows. I will not take up your time by reading the whole of the letter :

"I shall be in New Haven next week, to begin my course of lectures to the theological classes on Preaching. My wife takes boat for Havana and Florida on Thursday. I called on Monday, but you were out."

These clandestine letters were discovered after Mrs. Tilton deserted her home on the 11th of July last, and that was the first knowledge the plaintiff had that there had been any communication between the defendant and his wife. I have already, gentlemen, called your attention to the character of these letters, and sufficiently indicated their meaning, but I will pass on to some other topics. I have been speaking, gentlemen, of the facts embraced (with the exception of the one letter to which I have just called your attention), within the period between February 7th and April 2d, 1872. The next letter in the order of these events is written by Mrs. Morse to Mr. Beecher, and by him delivered to Mr. Moulton, as the custodian of his secret, and I will call your attention to a paragraph of it as being to my mind very significant. She commences :

'MY DEAR SON,'—

Mr. Shearman—Is that January, 1871 ?

Mr. Morris—No ; this is October the 21st, the year not given.

Mr. Shearman—1871 ?

Mr. Morris.—1871. It commences ;

"MY DEAR SON:—Do come and see me; I will promise that the secret of her life"—as she calls it—"shall not be mentioned. I know it is hard to bring it up as you must have suffered intensely, and we will, I fear, until released by death. Do you know, I think it strange you should ask me to call you Son, when I told Darling I felt, if you could in safety to yourself and all concerned, you would, be to me called that endearing name. Am I mistaken ?—MOTHER."

"The secret of her life" shall not be mentioned if you will call to see me. Come and see me, and the secret of her life which has caused you, and all of us, and will until released by death, such intense sorrow and pain, shall not be mentioned. I will not bring that up; I will not harrow your feelings by alluding to that, so that you need have no apprehension upon that score; I will not allude to the secret of her life." What are these people talking about? What does this mean, Mrs. Morse's writing to Mr. Beecher such a letter as this, in such language as that? What is this secret of her life that is tormenting them, and will, until released by death? He knows about it; she assumes the fact that he knows all about it; she assumes the fact that he knows that she knows all about it, and they talk about it as a matter well understood among them and between them. "The secret of her life shall not be mentioned;" "I know you must have suffered intensely by it, and we all shall hereafter until released by death." What are they talking about, gentlemen? What

is this secret of her life that is giving them so much pain and so much anguish, a subject that is not to be talked about among them, which must be buried, which is too piercing, too sharp-pointed, to be talked about? Leave it alone! Bury it up!

Gentlemen, in any ordinary case, where parties are judged by the ordinary rules of evidence, in any case that you might be called upon to try between people of less distinction than one now upon trial, with one half the evidence that I have detailed, to you, you would not hesitate for a moment in putting the seal of your condemnation upon the destroyer. But we dare not stop, even here. It would seem as though the case was proven over and over again by the confession of the defendant, by the confessions of his victim, by the knowledge communicated by her mother, by these letters, which are plain, clear and unmistakable. Yet, I say, we dare not stop, even here, and I propose, from this period onward, to present to you evidence still more conclusive than any that has preceded it; evidence so clear, so conclusive, so convincing, that you will not hesitate for a single moment to give us that justice which we claim at your hands. We come here from a blighted and a desolated home. The children of my client are scattered in different parts. He will return to-night to as cold, as cheerless, and as desolate a home as there is in the land. And from that home he will come in the morning to meet you, fathers, and brothers, and husbands; you coming from your happy homes, he from his desolate one. Until then I will close my remarks.

Mr. Beach—Generally we adjourn at this hour, if your Honor please.

Judge Neilson—Can you close the opening to-day?

Mr. Morris—No, sir.

Mr. Beach—It is impossible for Mr. Morris to do it.

Judge Neilson—The gentlemen will please keep their seats. Gentlemen of the jury, we now adjourn until to-morrow morning at eleven o'clock. I remind you to observe the injunction heretofore given. To enable you to avoid the throng you will please pass out with the officer before the other people leave.

When the jurymen were well away, the doors were opened and the Court room was vacated for the day.

## SECOND DAY'S PROCEEDINGS.

### CONTINUATION OF MR. MORRIS'S ADDRESS.

MRS. TILTON AND MRS. BEECHER IN THE COURT-ROOM—A SCRAP OF NEW EVIDENCE—A LETTER FROM MR. BEECHER TO MR. MOULTON—THE ARGUMENT STILL UNFINISHED.

The opening address of ex-Judge Morris in the Tilton-Beecher suit was continued on Tuesday, Jan. 12. Mrs. Tilton and Mrs. Beecher being among the auditors. His delivery was better than on the preceding day, although he was still laboring under a severe cold. He resumed his review of the letters written by Mr. Beecher to Francis D. Moulton.



Sentence after sentence was taken up and analyzed, the counsel in his anxiety to impress the jury with the significance of the extracts, repeating them again and again. A scrap of new testimony was introduced. This was an alleged letter from Mr. Beecher to Mr. Moulton in which the former resigned his position as pastor of Plymouth Church. The reading of this letter created a marked sensation among the spectators. Those, however, who have followed this case carefully have not forgotten that Mr. Beecher referred to this letter when he was examined by the Plymouth Church Investigating Committee, and explained the circumstances under which it was written. Inasmuch as it was not embodied in either of the elaborate statements presented to the public by Mr. Moulton, the defense probably concluded that it had been lost. Mr. Moulton seems to have taken excellent care of all the scandal literature which was placed in his keeping. Mr. Morris was interrupted once by applause when he paid a glowing tribute to Mr. Beecher's courage, and asserted that a thousand people with false accusations could not frighten him. Mr. Morris's argument was adroit, ingenious, and impressive.

The court-room was crowded an hour before Judge Neilson's gavel was heard. Promptly at 11 o'clock the Rev. Henry Ward Beecher, his silver-haired wife, and Col. Beecher entered the court-room and took seats near ex-Judge John K. Porter. Within a few minutes Theodore Tilton and his counsel appeared. They had scarcely taken their seats before a loud buzz ran around the court-room. Mr. Tilton cast a quick, nervous glance toward the door, and saw two ladies and Edward J. Ovington crossing the threshold. One of these ladies was Elizabeth R. Tilton; the other her friend, Anna M. Hicks. Mrs. Tilton was attired in a black silk dress and dark velvet cloak, with a black velvet hat ornamented by an ostrich feather. She removed her veil, and glanced for a moment at her husband. Mr. Tilton returned the look, and then whispered softly to Messrs. Beach and Fullerton. The lawyers simply smiled, and made no answer. Mrs. Tilton for the time was the central figure of attraction. She was very pale, and her manner was that of a timid, shy woman, who felt ill at ease under hundreds of staring eyes. The crowd instinctively instituted a comparison between her and Mrs. Beecher, and the result was

not favorable to Mrs. Tilton. It was apparent that they were opposite in character. On one side was a weak, timid, sentimental woman; on the other a positive, determined, and, even in her old age, a handsome woman. Mrs. Beecher was cool and self-possessed throughout the proceedings, notwithstanding the bitter attacks upon her husband's honor. Mrs. Tilton was evidently nervous and embarrassed. Mrs. Beecher has a classical face, full of force and expression; Mrs. Tilton's face is of a commonplace type.

At 4 o'clock ex-Judge Morris announced that he would require about one hour to close his opening remarks, and the court was adjourned. Mrs. Beecher left her seat, and, walking over to Mrs. Tilton, with an unaffected smile of good will upon her face, clasped hands with Theodore Tilton's wife. A whispered conversation, which lasted at least five minutes, followed. Immediately afterward Mrs. Tilton, Mrs. Beecher, the Rev. Henry Ward Beecher, and his counsel left the court-room by the rear entrance, followed by a large number of Plymouth Church members.

A curious crowd followed them to the sidewalk and watched every movement with eager eyes. Among the spectators were Gen. H. W. Slocum, the Rev. B. F. Halliday, assistant pastor of Plymouth Church, E. A. Studwell, Under Sheriff Daggett, Ed. J. Ovington, Moses S. Beach, the Rev. Justin D. Fulton, and the Rev. J. S. Bass.

#### THE PROCEEDINGS.

The abruptness with which the actual work in the case was resumed at the Beecher trial on Jan. 12 indicated that the Court does not intend that any time shall be unnecessarily wasted. Almost instantly on the falling of Judge Neilson's gavel, ex-Judge Morris took up the thread of his address, but not at the precise point where he rested the night previous. First he referred to some points which he had omitted in the subdivisions of his subject already treated.

#### HISTORY OF THE INTERVIEW AT MOULTON'S HOUSE.

IF THE COURT PLEASE—GENTLEMEN OF THE JURY: You observed, must have observed, yesterday, that I was laboring under a very severe indisposition, which, I regret to say, I am this morning; and in my hurry to get through with my part of the labor in this case I omitted some points to which I should have called your attention; I will briefly call your attention to some of those points now, before pursuing the discussion, at the point I left off at the close, yesterday. I called your attention to the interview had on the 30th of December, 1870, between Mr. Tilton and Mr. Beecher at Mr.

Moulton's house; when Mr. Tilton accused Mr. Beecher of adultery. I omitted to call your attention to the fact as to how that interview was brought about. On the 26th of December Mr. Tilton wrote a letter to Mr. Beecher, at the suggestion of Mr. Bowen, demanding, for reasons which he explicitly knew, his retirement from the pulpit. Prior to this, Mr. Tilton and his wife had agreed that the secret should be buried; they had agreed for the sake—he had for the sake of his family, for the sake of his children, that it should not be exposed, and she, fearing that this action on his part, although in the interest of another, might lead to complications and to disclosures that would involve her own secret; at her own solicitation this interview was sought, and it was a friendly interview. Its purposes were not to expose the secret or the crime which Mr. Beecher had committed, but, on the contrary, to put him upon his guard as against another man from whom he feared certain stories that were afloat; and it was in consequence of this understanding and this arrangement that this interview was had; and the letter which Mrs. Tilton wrote the same night, the 30th of December, 1870, shows that it had been understood and agreed between her and her husband that this secret should not be made known. And it was with this letter in his possession, and the letter written the next morning by Mrs. Tilton, that Mr. Moulton had his interview with Mr. Beecher on the night of the 31st December, 1870, and the closing line of this letter is, "You and I both are pledged to do our best to avoid publicity." So that you will perceive that this interview and the statement of these facts to Mr. Beecher was not for the purpose of exposing, but to carry out the pledge that he had made to his wife, that these secrets should not be exposed, and so to put him on his guard against another, that that purpose might be attained. I called your attention briefly from that point to the leading facts and features in this case, and I will not trouble you now by recapitulating those facts, except to call your attention to one fact which I omitted to mention, and that is, that the letter to which I adverted yesterday, containing a clear, explicit, and unequivocal confession of guilt on the part of Mrs. Tilton, was written when her husband was some five or six hundred miles away from her.

#### THE FIRST GUSTS OF THE TEMPEST.

During the period of which I was speaking at the adjournment of the court, to wit, 1871, trouble began to brew in another quarter. Inquiries began to be made by certain members of Plymouth Church. Some were suggesting that action should be taken with a view of dropping Mr. Tilton's name from the record; and in the Fall of 1871 there was a meeting held by the Examining Committee for the purpose of considering the propriety of dropping his name from the roll of membership of Plymouth Church. Mr. Beecher, at his request, was appointed at that time a Committee to wait upon Mr. Tilton and, as he said, to remonstrate with him and induce his return again to the church, in which he had not entered since the 3d of July, 1870. That was the proper course to have been taken by the Committee and by Mr. Beecher if the object had been, as then stated, to remonstrate

with Mr. Tilton and induce his return again to the church; but I shall be able to show you, I think, to your satisfaction, that there was another purpose, another object, another point to be gained by this action, and that was the concealment of the crime that we charge against Mr. Beecher. True, as it is said, if a brother has gone astray you should remonstrate with him: "If thy brother shall trespass against thee, go and tell him his fault between thee and him alone. If he shall hear thee thou hast gained thy brother, but if he will not hear thee then take with thee one or two more, that in the mouth of two or three witnesses every word may be established." In this case there were not two or three more taken. The defendant knew when he was appointed on that Committee to remonstrate, as he said, with Mr. Tilton, with a view of inducing his return into the church, he knew that it was as impossible to have him return to that church as it is to move the mountain. He knew that that man had received such a wound in his heart, and at his own hand, that he never again could sit and hear the man who had thus inflicted this wound explain the law as it was thundered from Mount Sinai, or the teachings of the Master from the Mount. Action was delayed for a considerable time. Members were anxious to have a report of this Committee which was to remonstrate with the erring brother, and during the interval, instead of trying to induce him to return again to the church, what does he do? He appeals to his friend Mr. Moulton to induce him to leave the church, to resign his membership from the church, and he writes Mr. Moulton a letter, appealing to him to use his offices to induce Mr. Tilton to resign from the church:

"There are two or three who feel anxious to press action on the case. It will only serve to raise profitless excitement when we need to have quieting. There are already complexities enough. We do not want to run the risk of the complications which in such a body no man can foresee and no one control."

What were the complications of this case that could not be submitted to an investigation of the Committee of his own church, whose duty it was to investigate just such matters?

Mr. Beach—What is the date of that letter?

Mr. Morris—December 3d, 1871.

"Since the connection is really formal, and not vital or sympathetic, why should it continue with all the risk of provoking irritating measures? Every day's reflection satisfies me that this is the course of wisdom, and that he will be the stronger, and B. the weaker for it."

That is, Bowen the weaker for it.

"You said that you meant to effect it. Can't it be done promptly? If a letter is written, it had better be very short, simply announcing withdrawal, and perhaps with an expression of kind wishes, &c."

Do facts like these need any comment? The defendant, the pastor of his church, securing himself to be appointed as the sole Committee for the avowed purpose of inducing Mr. Tilton's return to the church, and at the same time, while delaying the report, planning, plotting, devising means to have him withdrawn from the church. But finally a report is made; that he had seen Theodore, and that he had had great trouble, pecuniarily and otherwise, and it would be better for the Committee not to take further action at that time; and the advice was taken, and once more they have succeeded



in staving off, preventing an investigation that would reveal the truth. The reason of this action on the part of the church was the publication of the biography of Mrs. Woodhull, and Mr. Beecher. Fearing that if action was taken it would incense Mr. Tilton, and thus lead to an exposure of the whole difficulty, he was anxious to avert the threatened catastrophe and keep off the day of judgment; and the device succeeded, for a time at least. But it was only a temporary success. As were all the devices that were resorted to during the four years succeeding the commission of this crime, it was but temporary.

Foolish man! foolish men! to believe that you could permanently bury up such a crime as that! No; not until the immutable laws of Omnipotence are changed! Sooner or later, such a sin will be found out. But no sooner is one difficulty, or threatened difficulty, put aside by some device, than another difficulty, as was natural and to be expected, looms up, and that contingency has to be met in the same way. Mrs. Woodhull had become possessed of some facts, and there was a threatened exposure from that quarter, and in order to prevent that, another device must be resorted to, and that was to try and placate her by kindness, and for a time that device succeeded; but like all others, it was but temporary. Mr. Moulton, Mr. Tilton, Mr. Beecher, all trying to placate her, to keep her quiet, to prevent her from making the exposure or publishing anything concerning the difficulty, because it would lead to complications that would in the end reveal the whole secret. So, when Mrs. Woodhull writes to Mr. Beecher, requesting him to preside at a meeting, he turns it over to Mr. Moulton, his friend, his protector, and asks his judgment upon it, and puts himself wholly and exclusively in his charge.

"Do with me as you think best. I have trusted you heretofore, and have never been mistaken. I trust you now."

As he says in his letter of January 2, 1872:

"If you think it is best that I should preside at the meeting I will do so. I don't want to do it; I would rather not do it, but, if you say so, I must do so. I leave all to your judgment. Though it may involve my reputation in the estimation of many; though it may subject me to criticism, as it undoubtedly will; though it may injure me in public estimation to preside as requested, yet, as you say, as you advise, so will I do."

What do you think, gentlemen, must have been the secret intrusted to Mr. Moulton that would induce Mr. Beecher so completely, so absolutely, to abandon himself to Mr. Moulton, placing his reputation in his hands, laying aside his own judgment as to what was proper in his situation, leaving it all with him, having no mind, no judgment, no will of his own with reference to his action, but leaving it all with Moulton? At this time, bear in mind, gentlemen, it was more than a year after the letter of contrition had been written; it was after the biography had been written that so much has been said about; it was after Tilton had presided at the Steinway Hall meeting—in fact, it was after he had done everything that identified his name with this woman, and all for Mr. Beecher's sake. But that is not all. After this—after Mr. Tilton himself had ceased to have anything to do with Mrs. Woodhull, we find a friendly letter from her to Mr. Beecher, dated

June 3d, 1872, in which she calls upon him for aid and assistance in the difficulties with which she was surrounded then in the Gilsey House. The proprietors threatening to turn her out, she calls upon him for aid long and long after Mr. Tilton had ceased to have anything to do with her, and after he says that he had had an interview in which she was angry and threatening, because he had peremptorily refused to preside at the meeting. And yet, notwithstanding this angry talk between them and this peremptory refusal to preside at the meeting, we find an invitation from her, and he turning it over to Mr. Moulton to decide for him long after Mr. Tilton had ceased to have anything to do with her—a friendly communication from her, an appeal to him for aid.

#### STILL ANOTHER ALLEGED CONFESSION.

And now, gentlemen, as a relief to this planning, and plotting, and devising and scheming for the purpose of covering up this crime, let me call your attention to another frank, full, open, complete and clear confession of his guilt made by himself on the 5th of February, 1872. Prior to the writing of this letter, Mr. Beecher had met Mr. Tilton in the cars going East; he had had a friendly interview with Mr. Tilton, and on his return he received a letter to which allusion is made from Mr. Tilton's wife, which induced him to fear that there was danger of some action being taken with reference to this crime, and he says of his demeanor on that occasion:

"He was kind; we talked much. At the end he told me to go on with my work without the least anxiety in so far as his feelings and actions were the occasion of apprehension."

What does that mean? In 1872—the 3d of February, 1872—over a year after it is alleged that Mr. Tilton had made a false accusation against the Pastor of Plymouth Church, you find them having this friendly conversation, and Mr. Tilton assuring Mr. Beecher that he may go on with his work without apprehensions from him. Gentlemen, was that the language and the assurance of the man who had made such a false accusation? No; it was the language of the man who had been injured and wronged to the man who had thus injured and wronged him, saying to him: "Notwithstanding the great wrong that you have inflicted upon me, I forbear; go on with your work; I shall not expose the crime that you have committed against me." If it don't mean that, gentlemen, pray what does it mean? And then speaking in a desponding mood, expressing his apprehensions that the friendship of Mr. Moulton may be cooling towards him, he says:

"But I see you but seldom, and my personal relations, environments, necessities, limitations, dangers and perplexities you cannot see or imagine. If I had not gone through this great year of sorrow, I would not have believed that any one could pass through my experience and be alive or sane."

What were these dangers? What were these environments? What were these perplexities that had so harassed him during the past year as almost to drive him to madness and to express his astonishment that he could have endured what he had endured, and be either alive or sane at that time.

"During all this time you were literally my stay and comfort. I should have fallen on the way but for the courage which you inspired and the hope which you breathed. I came back hoping that the bitterness of death was passed, but T. T.'s troubles

brought back the cloud with even severer suffering. No man can see the difficulties that environ me unless he stands where I do. To say that I have a church on my hands is simple enough, but to have the hundreds and thousands of men pressing me, each with his keen suspicion or anxiety or zeal, to see tendencies which, if not stopped, would break out into a ruinous defense of me; to stop them without seeming to do it, to prevent any one questioning me, to meet and allay prejudices against T. which had their beginning years before this, to keep serene as if I was not alarmed or disturbed, to be cheerful at home and among friends when I was suffering the torments of the damned, to pass sleepless nights often, and yet to come up fresh and full for Sunday—all this may be talked about, but the real thing cannot be understood from the outside, nor its wearying and grinding on the nervous system. God knows that I have put more thought and judgment and earnest desire into my efforts to prepare a way for Theodore and Elizabeth than ever I did for myself a hundred fold. But chronic evils require chronic remedies. If my destruction would place him all right, that shall not stand in the way. I am willing to step down and out; no one can offer more than that. That I do offer. Sacrifice me without hesitation if you can clearly see your way to his safety and happiness thereby. I do not think that anything would be gained by it. I should be destroyed, but he would not be saved. Elizabeth and the children would have their future clouded. Life would be pleasant if I could see that rebuilt which is shattered. But I live on the sharp and ragged edge of anxiety, remorse, fear, despair, and yet to put on all the appearance of serenity and happiness cannot be endured much longer."

Do you believe, gentlemen of the jury, that it was possible for an innocent man to have penned that letter? Do you believe that that letter was written by a man understanding the full force and meaning of every word that he penned. I say, do you believe it possible that an innocent man could write such a letter as that under such or any circumstances? No, gentlemen; he had received the note of warning from Mrs. Tilton, and he was afraid that the difficulties that were then surrounding Mr. Tilton, and the great load that he was then carrying, would break him down, and that he would be unable longer to suffer in secret as he was suffering, while to all outward appearances the man who had wrought this ruin was prosperous and receiving the plaudits of his fellow man.

It was the note, as he says in the letter, a note of warning, that he had received from Elizabeth, and fearing that there was danger ahead, he pours out again his soul to his friend, hoping thereby that the appeal might be effectual. If he had said in this letter, "I fear Theodore Tilton will expose the fact of my criminal relations with his wife," it would not have been a more clear and conclusive confession of guilt than it is. "If my destruction would place him all right, that shall not stand in the way." Place him all right? What had been done to him? Why, the pretense is that the wrong had been done to the defendant, to Mr. Beecher by Mr. Tilton, yet, with conscious guilt, with the consciousness of having wrought this great ruin, he says "If my destruction will place him all right, that shall not stand in the way." If my destruction will place him all right?—how place him all right? But while he is willing to do this, while he is willing, if his destruction would place him all right to be destroyed, he reminds his mutual friend that that would not remedy the evil; that Mrs. Tilton and the children would be left to a blight; that their future would be

clouded; that his destruction would not prevent the exposure of the secret. He would be destroyed—"I would be destroyed, but he would not be saved," because my destruction would lead to the exposure of the very thing that we seek to avoid. But, "I am willing to step down and out. No man can offer more: this I do offer." A man than whom none in the country possessed greater power in his station, at the head of one of the largest churches, engaged in other enterprises, his name co-extensive with civilization—this man offering to step down and out, to vacate his position and retire into private life, if the man who on the 30th of December, 1870, falsely accused him of an infamous crime, says that he shall do it. Think of it for a moment! An innocent man occupying such an elevated position accused by a member of his own church, falsely, of an infamous crime, and after more than a year of planning and plotting with that member to keep the facts secret, offering to give up everything, church, paper, the "Life of Christ," and every work in which he is engaged, at the bidding of the man who had made this false accusation! If the theory of the other side be true, had Mr. Tilton offered himself up as a sacrifice there would have been some propriety in the offering. But for the man thus injured to offer himself up as a sacrifice to the man who had injured him, I submit, gentlemen, is more than human nature can conceive.

"Sacrifice me without hesitation if you can clearly see your way to his safety and happiness thereby."

I am in the full flush of mental vigor, at the very acme of fame; I have dedicated my life to the cause of religion and morality; I am at the head of a great church; I am editor of a great Christian paper, largely depending upon my influence and my fame; I am writing the "Life of Christ," the delay already in which has well nigh brought ruin upon my friends who are engaged in its publication; yet, notwithstanding all these interests that I have in charge, notwithstanding all the obligations that they impose upon me to go forward in my work, notwithstanding all this—sacrifice me without hesitation, if thereby you can see the safety and happiness of the man who, on the 30th of December, 1870, falsely accused me of an infamous crime. No, gentlemen; there was something beyond that that induced Mr. Beecher on this occasion thus to offer himself up as a sacrifice. He saw before him the possibility of the exposure of this crime. He saw painted in living colors the ruin that he had wrought. He saw the desolation that he had caused; and he saw, further, the still greater, more widespread, desolation that its public knowledge would cause. Anything to prevent that, if it is possible; if it is possible to do it, do it—do it! Don't consider me; I am not worthy to be considered in this case; sacrifice me; do with me as you please. Do with me as you please, if you can thereby see the safety and happiness of the man that I have so wronged—if you can thereby build up that that has been shattered; if you can build up this home again; if you can restore there the happiness which I have destroyed. Do anything, just as you please, just what you think best; I yield myself wholly and entirely to you; I have nothing to say—"sacrifice me without hesitation!" he exclaims:



"Nothing can possibly be so bad as the horror of great darkness in which I spend much of my time."

What does that mean—"this horror of great darkness"—in which he spent most of the time? It was the brooding over of the crime that he had committed; it was the vision, ever present before him, and haunting him day and night; that was the great darkness—the "horror of great darkness"—in which he spent most of his time. He saw children worse than orphaned; he saw a home desolated and those children scattered; he saw the aged parent of these men tottering upon the verge of the grave with dishonor that he had placed upon them; he saw his own high station stained, the robes soiled; and he saw his own family disgraced; and he saw Christendom blush at the crime that he had committed. No wonder that he lived most of the time in the horror of great darkness.

#### A SHARP ANALYSIS OF SIGNIFICANT WORDS.

"Life would be pleasant if I could see that rebuilt which is shattered." What is it that has been shattered, and what had he to do with the shattering? What does it mean? The answer has already been given in the mind of each one of you gentlemen. It was the home that had been shattered, and it was he who had shattered that home, and "Oh! if I could see that rebuilt, life would be sweet, but as it is, I live in the horror of great darkness." "To live," he exclaims, "on the sharp and ragged edge of anxiety, remorse, fear and despair cannot be endured much longer." Every word penned there so carefully was understood fully by Mr. Beecher when he penned that letter. No man understands the meaning of the English language better than he, and when he used that terrible word "remorse" he confessed his guilt. The word itself is a confession of guilt, and implies a crime behind it to cause or produce the feeling of remorse. The very meaning of the word is "to bite again." Remorse is something which keeps biting its victim, gnawing him, preying upon him. As Croghan says: "When remorse is blended with the fear of punishment, and rises to despair, it constitutes the supreme wretchedness of the mind." This is the remorse that Mr. Beecher felt; a remorse blended with the fear of punishment, that is a constant dread of discovery, for discovery carried with it its own punishment, and no wonder that it should engender in him, as our author describes it, "the supreme wretchedness of the mind." No wonder that it should, as another author describes it, "draw him nigh to the grave." There are many kinds of human wretchedness. There is poverty, sickness, bereavement. There are various types of anguish, agony, heart trouble; but remorse is "the supreme wretchedness of the mind," and that was Mr. Beecher's condition of mind when he used that word "remorse." When he used that word he confessed to all that is contained in it. He confessed to a criminality capable of producing the supreme wretchedness of the mind; a guilt which makes remorse possible; a guilt which bites and gnaws and preys upon him, biting like a serpent, stinging like an adder. What was there at this time and at this period that should place him upon "the ragged edge of anxiety and remorse, fear and despair," so far as

the world knew? So far as the world knew, Mr. Beecher was at the acme of his fame. None of these facts which subsequently were made public and so disturbed him had at that time been made public or were known. Bear in mind that at the time he was living in the "horror of great darkness, suffering the torments of the damned," "was upon the ragged edge of despair, fear and remorse," the Woodhull publication had not been given to the world, because that was not published until the 2d of November, 1872. Bear in mind that at this time that he was suffering the torments of the damned, Mr. Tilton's letter to Mr. Bowen, relating charges of moral delinquency made by Mr. Bowen, had not yet been made public, because that did not see the light of day until the 20th of April, 1873. Bear in mind that Mr. West had not at that time notified to Mr. Beecher that he intended to prefer charges against Mr. Tilton and Mr. Bowen, in which was the specification averring that on the 3d of August, 1870, Mr. Tilton had told Mrs. Bradshaw that he had discovered a criminal intimacy between Mr. Beecher and Mrs. Tilton, to which specification her name was attached as a witness. Bear in mind that at this time Mr. Tilton had not appeared at Plymouth Church, and there confronted its pastor with the question whether he had spoken falsely of him or not. Bear in mind that at this time the council that so disturbed the defendant had not yet been called, nor, until November, 1873, were the initiatory steps looking to that council taken. Bear in mind that Mr. Tilton's letter to Dr. Bacon had not been published, because that was not published until the 24th of June, 1874. At the time that he was living in this "horror of great darkness," at the time that he was suffering "the torments of the damned," none of these things had been made public. They had just passed through a successful pew renting of the church. He had delivered a course of lectures to the theological students of New-Haven with great success, which had added greatly to his already great fame. They were thinking of making preparations to celebrate what was known as the "silver wedding," the twenty-fifth year of his ministrations in that church; and at this time when to the world he was at the height of his prosperity, surrounded by powerful friends, with resources unlimited, with fame as broad as Christianity and civilization—at this moment, at this time, thus situated, thus circumstanced in the eyes of the world, standing as the foremost preacher of the age, with nothing, so far as the world knew, to cast a shadow across his pathway, he offers to give it all up; he offers to "step down and out" at the mere suggestion of Mr. Tilton.

Would you require, gentlemen, any other evidence of the guilt of the defendant than he has furnished in the letter to which I have called your attention, taken in connection with the circumstances surrounding him at that time? No; no intelligent man, no intelligent juror, I apprehend, would require any other evidence, and if this language can be explained upon any theory of innocence I shall be for one delighted to hear the explanation. I say to you, gentlemen of the jury, it cannot be explained consistent with innocence. All the sophistry and all the subtleties in the world cannot so gloss and color up the meaning of that letter as to take away the guilt there con-

fessed—as to bury the meaning of those terrible words in that letter.

Oh! but it is said that Mr. Beecher was a coward, and that is what led him to do these foolish things; and that suggestion, gentlemen, calls up another thought in my own mind. Bear in mind that these letters are written by Mr. Beecher voluntarily; they are written to the man who has been entrusted with the secret, whatever it be, and therefore it was at the time an honest expression of Mr. Beecher's feelings. If he had been an innocent man, do you think he would voluntarily have written such a letter as that to Mr. Moulton? If he had been an innocent man do you think that he would have deliberately sat down and written such a letter as that? Why, no; if he had wanted to have seen Moulton he would have seen him; but if innocent he would not have written such a letter as that. And in all the letters he has written during the four years, all the conversations that he has had in writing to Moulton, there is never one intimation that he is fearful of a false accusation being made; no intimation of that. Every letter and every act is based upon the theory of some great wrong committed by him, and not an intimation anywhere in any letter written to a third party, his devoted friend, the man sent to him by God as he says—not an intimation in any of those letters that he was fearful of a false accusation being made against him. Why, gentlemen, is it necessary upon such facts as this to dwell? An innocent man sitting down and writing such a letter as that to a friend, and that friend one in whom he placed implicit, unbounded, unquestioning faith, without ever alluding to the fact. Oh! would he not have said "Frank, this is too bad; you know that this is false—that this charge is false; it is too bad that I should suffer in consequence of that. Stop your friend, stop him." Moulton—he knew that this charge was true, or he knew that it was false—and Mr. Beecher believed that Mr. Moulton knew whether it was false or not. Did Mr. Beecher suppose for a moment that Mr. Moulton did not know whether the charge was true or false? Do you suppose that if his mind was hesitating upon that point, that he didn't know whether Mr. Moulton was aware of the truth or falsity of the charge, and that he would not have informed Mr. Moulton of the fact? It is evident that he supposed that Mr. Moulton knew or believed the charge to be true, and if he supposed that Mr. Moulton believed the charge to be true, and it was false, why didn't he undeceive him? Why didn't he say, "Moulton, you are laboring under a misapprehension here. You believe that this charge is true. It is false; it is false!" No, he says nothing of the kind; but he proceeds upon the assumption that the charge is true and that Mr. Moulton knows it to be true, and he sits down and he writes such a letter as that voluntarily to him. I ask you, gentlemen, again, do you want any further evidence of the truth of the charge that we bring against Mr. Beecher than that letter, with the surrounding circumstances under which it was written?

#### PRAISE OF MR. BEECHER'S BRAVERY.

Now, gentlemen, I come back to the suggestion that I was about to make a few moments ago. The claim that

is made now, that, situated as Mr. Beecher was, fearful of this charge being made, it was his cowardice that induced him to act as he had been acting for four years. Why, gentlemen, if there has been one distinguishing characteristic of Mr. Beecher, it has been his courage, his boldness, his fearlessness. When, in 1863, he faced the mobs of Liverpool and Manchester you recollect how his praises rang throughout this broad land for his bravery, his boldness and his courage; and when he is facing a hostile mob, a hostile crowd, surrounded by strangers, he is as bold as a lion, but when he returns to his City of Brooklyn, where he is all powerful, surrounded by powerful friends, one word from whose lips would have crushed any man who dared utter a false accusation against him, he is a coward. Ah! it is the cowardice of conscious guilt! The bravery he manifested in England was the bravery of truth—conscious truth and the justice of his cause. But here, surrounded by his church, upheld as no man ever has been by his church, in the city where he was all powerful—here he is a coward. What is it that makes him a coward? Conscious guilt. A million of minions, with their false accusations, could not frighten that man, [Murmurs of applause.] But one Tilton, with his truth, appearing before him, and he is a coward. No, gentlemen, I defend to that extent the reputation of the defendant. He is not a coward except when conscious of his guilt, and then we are all cowards. When conscious of his innocence he knows no fear, can face any danger, but his courage all vanishes in sight of the great crime that he has committed. No man can be brave, no man can be courageous when he sees before him a desolated home that he himself has made desolate. No man can be brave when he sees a once happy and loving wife and mother debauched and an outcast. No, in the presence of that man, he exclaims:

"Do with me as you choose; sacrifice me at your will—anything; I deserve it; I merit it. I offer myself up as a sacrifice to the man that I have so wronged."

But, gentlemen, this letter but breathes the spirit of all his letters upon this subject. Every letter, if written to Moulton in pure friendship, contains some allusion to this dark subject: On March 25th, 1872, he writes to Mr. Moulton, in which he says:

"I have been doing ten men's work this Winter, partly to make up lost time, and partly because I live under a cloud, feeling every month that I may be doing my last work."

He is living under a cloud, expecting that every month may be his last, because fearful and apprehensive that at any time this great secret should be made known, and if made known, that that would be the end of his usefulness. That is the way that he talked of this for a long time; and, as I will show you before I get through, was willing at any time to have vacated his pulpit, to have resigned his ministry, to have avoided the exposure of this secret.

During this time of which I am now speaking no other difficulty arose. As I said a little while ago, it has been a succession of difficulties to keep down this fact. They have had to resort, first to one device and another and another, and as one was put away another arose because of the impossibility of concealing permanently such a crime. Mr. Tilton had lost his situation. There was a penalty attached to the contract,



and that had not been adjusted or settled; and Mr. Tilton had instructed his lawyers, Judge Reynolds of this Court, and Mr. Ward, to commence suit. That was another cause of alarm. Fearful that that would lead to the exposure of the secret the defendant was anxious that some measures should be taken to prevent a suit between Mr. Tilton and Mr. Bowen, and finally an arbitration was entered into, Mr. Claflin, Mr. Storrs, I think, and Mr. Freeland being the arbitrators. At the conclusion of that arbitration, or after that arbitration, another device was resorted to to keep down the scandal that was being put afloat at this time and others, and a covenant was entered into, signed by Mr. Bowen, by Mr. Beecher, and by Mr. Tilton, and I will call your attention to a sentence of the portion signed by Mr. Beecher.

"If I have said anything injurious to the reputation of either" (that is to Tilton or Mr. Bowen) "or have detracted from their standing and fame as Christian gentlemen and members of my church, I revoke it all, and heartily covenant to repair and reinstate them to the extent of my power."

Mr. Beach—When was that?

Mr. Morris—The 2d of April, 1872. As first prepared, the part of the covenant signed by Mr. Tilton made him deny that there were any charges against Mr. Beecher, so far as he was concerned. That he refused to sign but did sign the part agreeing not to reiterate charges Mr. Bowen had made against Mr. Beecher, it having no reference to the charge that we are investigating now; but it was one of the devices resorted to to cover up guilt and prevent the exposure of crime. And bear in mind, gentlemen, that this covenant was signed on the 2d of April, 1872, a year and a half after the charge made by Mr. Tilton against Mr. Beecher of adultery, and in that he says:

"If I have said anything injurious to the reputation of Theodore Tilton," (putting it in the singular) "or have detracted from his standing and fame, as a Christian gentleman and member of my church, I revoke it all."

What, I ask, did he, on the 2d of April, 1872, revoke, as towards Mr. Tilton? And bear in mind, at that time Mr. Tilton had written the Woodhull biography. If Mr. Beecher had for that condemned him, he revoked it all. Bear in mind that before that Mr. Tilton had presided at the Steinway Hall meeting, at which Mrs. Woodhull delivered her lecture. If Mr. Beecher condemned Mr. Tilton for that act, on the 2d of April, 1872, he revoked it all. If Mr. Tilton had excited Mr. Beecher's indignation by proclaiming free love doctrines so that *The Advance* had to be started to supersede *The Independent* in the North-West, he revoked it all. Had he said that prior to this Mr. Tilton was bankrupt in character and morals; if so, on the 2d of April, 1872, he revoked it all. Had he charged Mr. Tilton with promiscuous immoralities, if so, he revoked it all. Had he told Mr. Bowen that he was not fit to edit *The Independent*, because of his free love doctrines, because of his promiscuous immoralities, because of his brutality to his wife, because of his denying the inspiration of the Scriptures and the Divinity of Christ; if so, on the 2d of April, 1872, he revoked it all. Had he accused Mr. Tilton, or charged him with having on the 30th of December, 1870, charged him falsely with an infamous crime;

if so, he revoked it all, and proclaimed solemnly that he was a Christian gentleman. All these things had transpired prior to the 2d of April, 1872, and if Mr. Beecher up to that time knew of or had said anything derogatory to the Christian character of Mr. Tilton, he revoked it all, he was a Christian gentleman. And, but a few days after, in his own paper, he says of him:

"Those who have known him best are the most sure that he is honest in his convictions as he is fearless in their utterance, and that he is manly and straightforward in the ways in which he works for what seems to him best for man and for society."

And this is the testimony of Mr. Beecher, of a man he now declares he then knew to have been bankrupt in morals and in character, to have been guilty of promiscuous immoralities, to have been a libertine! What think you, gentlemen, the defendant means by this conduct? As well may they attempt to argue that I am now talking to you in midnight darkness, rather than in the glare of the noon-day sun, as to attempt to give any other meaning to the conduct of the defendant in this case than that I have attributed to him!

#### WIDE LATITUDE IN INTERPRETING WORDS.

I will call your attention, gentlemen, here to another circumstance. Mr. Beecher says that when Mrs. Tilton made her confessions, she said that Theodore confessed his alien loves. To Mr. Moulton, Mr. Beecher said that Mrs. Tilton told him, that when she made her confession, her husband had made similar confessions to her. She was then excusing her having confessed to Mr. Beecher, and she makes this statement to him. When they speak of alien loves, so far as Mr. Tilton is concerned, they say it means adultery; when she says to the defendant she made similar confessions to him it don't mean adultery!

#### THE WOODHULL-CLAFLIN STORY.

Now, gentlemen, I will proceed to examine some of the facts occurring in a later stage of the history of this case: On the 2d of November, 1872, was published in what is known as *The Woodhull & Claflin Weekly*, a story in which Mr. Beecher was accused of adultery with Mrs. Elizabeth R. Tilton. At the time that this publication appeared Mr. Tilton was absent from the city and absent from the State. He was in one of the New-England States, engaged in the Presidential campaign, when the story came out accusing his pastor with adultery with his wife. What did Mr. Beecher do in connection with that story, and with that publication; and what, if an innocent man, ought he to have done is the question that now concerns you. Did he, on that occasion, act as an innocent man, or did he on that occasion act as a guilty man? What ought he, as a Christian minister, to have done? Bear in mind, gentlemen, that he was accused of the crime of adultery with the wife of the man he declared but a short time prior to have been a Christian gentleman, and an honored member of his church! And he accused of adultery with the wife of a member of his church—what should he have done? What did he do? He did nothing. He waited until Mrs. Tilton returned. Aye, yes, he did! Because the very night of the publication of that story a meeting of his trusted members, some of

whom afterwards figured on the Committee, was called together at the house of Mr. Halliday, and they are there informed that they had best take no notice of the story, but try and live it down—try and live it down—fearful that his church would take some action, would say to him, "This scandal must be investigated. Here you are charged with adultery with the wife of a member of this church, and she a member of this church," therefore, before any steps could be taken in that direction, this other device was resorted to. Another device, and that was to try and live it down. It may be that the church, it may be that the pastor of Plymouth Church, with his power, with a church that would stand by him right or wrong, guilty or innocent; it may be, with all this immense power, he could live it down, they could live it down, but how, I ask you, in the name of a kind heaven, could the woman live it down? You recollect, gentlemen—if you do not, I will state to you the fact—that after the publication of this story, there was a universal demand throughout the land—a universal call upon Mr. Beecher to speak but one reassuring word, and deny this charge. Every appeal that could be made for the cause of morality, for the sake of religion, by all that he held dear on earth, by every consideration that could be addressed to him, he was adjured to deny the truth of the story. But not a word, not a word. While the cause of religion was suffering from this scandal, and while the trusted member of his church was suffering in the estimation of all womanhood, he remained silent, as silent as the grave, and when Mr. Tilton returned, he induced him, or tried to induce him—him, himself—to publish this statement:

"In an unguarded enthusiasm, I hope we'll and much of one who has proved utterly unprincipled. I shall never again notice her stories, and now utterly repudiate her statement made concerning me and mine."

Was Tilton the man then to deny that story? who knew absolutely, unqualifiedly, whether the story was true or whether it was false? Mr. Beecher, and against him the charge was hurled and against a member of his church—what was his duty? What should an innocent man have done under such circumstances? Why, he would have branded it as false at the earliest possible moment. He would not have said, "I cannot do that because it proceeds from so low an origin." Oh! no. It was in the paper. I care not what paper, or what the character of the paper was; it was in the paper, and it was his duty, being innocent, to have denied the story and not stop to question its authority. But after that, it appeared in many respectable journals of the land, and those in which it did not appear united in the call upon him to say one word, and give one assurance that there was no truth in the story, that his friends in his behalf, and in the behalf of morality, might deny it. But, no; no denial, no denial. Very truly Tilton replied to him:

"You know why he sought Mrs. Woodhull's acquaintance. It was to save my family and yours from the consequences of your act, the facts about which had become known to her. They have now been published, and I will not denounce that woman to save you from the consequences of what you have done."

Why, I ask again, did he allow this pernicious story to go

throughout the land, eating into his reputation, sully the cause of religion? Why did he do it? Why did he not deny it? Because a denial would have provoked contest on her part. It would have increased the discussion, it would have led to an investigation on the part of his church, and an investigation would have been ruin, because it is of it that he speaks, when he speaks of the difficulties to prevent the "tendencies which if not stopped would break out into a ruinous defense to me." Anything that tended to investigation—anything and everything that look towards developing the truth—was a ruinous defense to him, and that is what he means in his letter. And the difficulty of preventing that tendency, of stopping those tendencies without seeming to do it. What does that mean, "without seeming to do it"? Why, he could not say anything. If he did it would give it importance, and that would lead to disclosure, and therefore he remained silent. He could not say anything in behalf of Mr. Tilton to relieve him from the unjust odium that he has suffered during these four years, of being the slanderer of the pastor of Plymouth Church, because if he did, it would give point to the charge, and so he remains quiet and allows this story to go on uncontradicted, month after month, for six months, and at last he is compelled to deny it. And only when he is compelled to deny it because of fear of more serious consequences, does he hold his peace and say nothing concerning the publication of the truth or falsity of the story.

If your Honor please, it is four minutes ahead of the time of adjourning, but this is a point at which we can conveniently take a recess.

Judge Neilson—Gentlemen of the Jury, please be in your seats promptly at 2 o'clock, to which time we will now adjourn.

### THE FIRST OF THE COMMITTEES.

The Court met exactly at 2 o'clock, pursuant to adjournment.

The Clerk called the roll of the jurors, and they all answered to their names.

Judge Neilson—Proceed, Mr. Morris.

MR. MORRIS—GENTLEMEN OF THE JURY: I was calling your attention at the adjournment of the Court to the efforts made by the defendant to prevent an investigation into the facts connected with the Woodhull publication. Although that examination was delayed for a time, yet it was but a little while before a Committee was appointed, of which the defendant was a member. That Committee was appointed in December following the publication of the Woodhull story. Mr. Beecher had made efforts to have a statement made by Mr. Tilton for the purpose of relieving the story, as far as Mr. Tilton was able, of its odious features; and Mr. Tilton prepared a card, which was submitted to Mr. Beecher, which was designed for publication. In that card was quoted the language used by Mrs. Tilton in a letter written to Dr. Storrs. Mr. Beecher objected to the language in that card—the proposed card—which was, in effect, that he had solicited her to become a wife to him, together with all that that word implied, saying that the publication of such a card as that would be just as bad as to publish the entire



facts; and the card was not published, and no publication at the time was made with reference to it. I will not stop to call your attention to the precise language of the letter, that portion of it to which Mr. Beecher interposed his objection, but I have given you, I think, very nearly the exact language. Certainly, I have given you the exact idea, that Mr. Beecher had solicited her to be a wife to him, with all that that word or term implied. This, Mr. Beecher says, would be as bad as publishing the whole truth, the fact that he had not only solicited, but that he had accomplished his purpose; and it was with reference to this negotiation that was going on between these parties that Mr. Beecher referred when he said to his Committee, and as an inducement to have them delay action, that he had seen Mr. Tilton lately and that he would publish a card denouncing the Woodhulls. But the card was not published, and Mr. Beecher, when called upon by Mr. West, a member of that Committee, attempted to dissuade him from taking action with reference to the matter. He said to this Committee, when finally he met with them, that he believed that Theodore was one of his best friends; that he had never intentionally tried to injure him, and that by assuming a prudent course with him, they might yet save him and restore him to his former position of usefulness and influence in the church. This was December, 1872, after the publication of the Woodhull story, and he used this language toward Mr. Tilton more than two years after he had charged him with adultery with his wife; that he was one of his best friends, and that he had never tried to injure him. And as evincing his great anxiety concerning an investigation into the truth of the story that had been published by the Woodhulls, I would call your attention to one or two notes written by him to Mr. Moulton:

"Sunday, December, 1872" (the day of the month not given), "Your interview last night was very beneficial, and gave confidence. This must be looked after" (speaking of his interview with Mr. Halliday). "It is vain to build if the foundations sink under the effort. I shall see you at 10 o'clock to-morrow," etc.

And in another letter dated Monday, the day of the month and the month are not given, but at about that time, he says, in speaking of a conversation he had had with Mr. Claflin:

"I asked him if B. had ever made a statement of the very bottom facts. The real point to avoid is an appeal to the church and then a council. It would be a conflagration, and give every possible chance for parties, for hidings and evasions, and increase an hundred fold this scandal, without healing anything. Meantime I confide everything to your wisdom, as I always have with such success hitherto, that I have full trust for the future."

The real point to be avoided is an investigation on the part of the Church, and then a council. Such a proceeding as this would be a conflagration. What would make the conflagration but the revelation of the fact and the crime which we charge him with? Certainly no advice that he may have given Mrs. Tilton; certainly no counsel that he may have given Mr. Bowen; certainly no false charge would make a conflagration, because no man lived who dared make such a false charge against such a man, situated as he was. No; the conflagration would be the revelation of the truth that has been revealed, and that will be revealed now to you in this trial. Indeed, it has been a conflagration, but it has been a conflagration because

the truth has come out. It is because the facts demonstrate beyond cavil the truth of the charge that has been made against Mr. Beecher, of his adultery with the wife of Theodore Tilton.

#### CARPENTER AND CLEVELAND AS PEACEMAKERS.

And why, I ask again, gentlemen, all this anxiety, all this plotting and planning, not only with Moulton, but with Tilton himself, the very man from whom they pretend they feared a false charge? He is plotting and planning with them in order to prevent the exposure of the secrets. The man who is to make the false charge you find in consultation with Mr. Beecher, you find in consultation with Mr. Moulton, and you find them all in conference together, devising cards, preparing cards, planning this movement and planning that movement to prevent an investigation into these facts, and yet they fear a false charge, and the man who is to make the false charge is busy during all these years and all this time trying to plan and plot how he will prevent himself from making that false charge. Such, gentlemen, is the logic of this case. Such are the extremities to which the defendant is driven, in order to attempt an explanation of his conduct. Shortly after this attempt to have this card arranged for publication, Mr. Carpenter, a man whom you know by reputation, a distinguished artist in the city of New York, who had known Mr. Beecher for many years, had been his friend of twenty years' standing—he called to see him, and he made then a proposition to Mr. Beecher designed to avoid the necessity of a public investigation. He said to Mr. Beecher that they were about starting a new paper in the City of New York, and that if he would take the editorship of that, he would be relieved from the dangers, or much of the dangers that surrounded him in his own church, this one and that one pressing for investigation and for explanation, and so favorably did Mr. Beecher think of that that he went with Mr. Carpenter around to Mr. Moulton's, and there discussed the matter, the feasibility of it, it being an opportune time, as Mr. Carpenter said. He had closed his twenty-fifth year of ministration his silver wedding had been had, and he could retire without exciting comment; and after considering the proposition for some time, he said to Mr. Carpenter: "I cannot accept it now, because it will be said that I have left because of the Woodhull publication—that they have driven me out of the pulpit;" and that was the reason, and that was the only reason given by him why he did not adopt the course suggested by Mr. Carpenter. This negotiation was continued for some time; parties went to see Mr. Beecher upon the subject—those who contemplated starting the enterprise—and the negotiation fell through, simply because Mr. Beecher was afraid of the comment that it would excite in consequence of the Woodhull publication.

And now, gentlemen, I come to a period in the history of this case, if possible more conclusive, more absolutely conclusive, against the defendant than any fact to which I have directed your attention—the period closing with the 22d of June, 1873. Within this period are contained facts and events that leave no possibility of doubt as to the

truth of our charge and the guilt of the defendant. The covenant which I have called your attention to had been entered into on the 2d of April, 1873, but notwithstanding this covenant, Mr. Bowen was whispering these stories against Mr. Beecher, and another device had to be resorted to, and this time the device was to find an excuse for publishing the covenant as against Mr. Bowen, to stop his mouth, not as against Mr. Tilton to stop him, and for that purpose a plan was agreed upon, and this was the plan. Mr. Carpenter, to whom Mr. Bowen had repeated these stories, was in company with Mr. Clafin and Mr. Cleveland, and Mr. Moulton, to go and see Mr. Bowen, confront him with these stories, and unless he retracted them, to publish the covenant as against him. In pursuance of this arrangement, Mr. Beecher, on May 25th, 1873—a Sunday—sent Mr. Cleveland with his horse and buggy over to New York to hunt up Carpenter, and that night the interview was held with Mr. Bowen, in the presence of Mr. Carpenter, Mr. Cleveland, and Mr. Clafin; and Mr. Bowen not denying the charges that he had made against Mr. Beecher, the covenant was published. Mr. Beecher, on the same day that he sent his horse and buggy after Carpenter, writes a note to Mr. Moulton, in which he says:

"I sent Cleveland with my horse and buggy over to hunt Carpenter. Will you put Carpenter on his guard about making such statements. From him these bear the force of coming from headquarters."

At another time he says that the first he knew of Carpenter was that he was putting his nose in this business that did not concern him, and on Sunday, May the 25th, he is sending his horse and buggy scouring the City of New-York to find Carpenter, and bring him over here for the very purpose of this interview with Mr. Bowen. And if you look at the letters, the dates of the letters, and the conferences, and the plannings, and the plottings in this case from the beginning, four-fifths of it occurred on Sunday. Before church, after church, at Moulton's, at the church, at Mr. Beecher's, in different places, was this continual planning and plotting in order to prevent an investigation of this secret.

Five days after this conference was had at Mr. Bowen's the covenant is published, May 30, 1873, and the next day the parties came out in denunciation of Mr. Tilton as having been guilty of some great crime toward Mr. Beecher, and as having been magnanimously forgiven by him, and Mr. Beecher chided and blamed because he had not taken the parties into court, and had them punished as their crime deserved. Mr. Tilton said to Mr. Beecher:

"This I cannot, and this I will not stand any longer. You must relieve me of this injustice, or I will relieve myself. I will not, after having suffered this wrong, after having had my family destroyed, my wife debauched, I will not be held up to public odium as having committed a crime against you, and been magnanimously forgiven by you. Relieve me of this or I will relieve myself."

And on a Saturday morning, the day following, Mr. Tilton prepared this card for publication, which was exhibited to Mr. Beecher:

"To the Editor of the Brooklyn Eagle: Samuel Wilkeson, a business partner of Henry Ward Beecher, authorized the publication of a part of a document touching the relations of Mr. Beecher and Henry C. Bowen. This document, without the

addition of another of which I presume Mr. Wilkeson had no knowledge, grossly misrepresents Mr. Beecher's relations to myself. The extent of this misrepresentation, even by well meaning journals, is shown by the following extract from the *New York Express*: 'Something under the circumstances was due to the public, Mr. Beecher should remember, as well as to his peculiar friends, Mr. Bowen and Mr. Tilton; and hence, while it was well enough to forgive them for the great, we had almost said irreparable, injury they have done him, it is to be regretted that he did not bring the alleged slanderer or slanderers into open court, to be dealt with as they deserved.' The above indicates the feeling of many hundred men and women as to my supposed unjust behavior towards Mr. Beecher, and is based on the notion that I slandered a clergyman, that I retracted the slander, that I have been forgiven by him and have been magnanimously restored to his confidence. This is the impression which is now becoming general, and is a grievous wrong to me and my family. No longer can I consent to remain in a false position before the public. I therefore append the following statement by Mr. Beecher."

Mr. Evarts—What is the date of that?

Mr. Morris—The date of that is the 31st of May, 1873. Then follows the letter of contrition, with four or five words only stricken out, to which is added:

"The above document will show whether it is I who have wronged Mr. Beecher or Mr. Beecher who has wronged me,  
"THEODORE TILTON."

This card was shown to Mr. Beecher on the same day by Mr. Moulton, and he was informed that unless he published a card relieving Mr. Tilton from the unjust odium cast upon him by the publication of the covenant, that he, Mr. Tilton, would publish this, and at the same time Mr. Moulton submitted to Mr. Beecher for his consideration a card which Mr. Tilton had prepared for him, Mr. Beecher, to publish. He had his choice—publish the card that was proposed or one similar for himself, or Mr. Tilton would publish this card in his own vindication.

#### MR. BEECHER'S LETTER OF RESIGNATION EXPLAINED.

You will perceive, gentlemen, that in this proposed card of Mr. Tilton, he makes no charge against Mr. Beecher. He accuses Mr. Beecher of no crime whatever. He does not say that Mr. Beecher has been guilty of adultery with his wife. He makes no charge, whatever, but he simply proposed to print the letter of contrition written by Mr. Beecher, on the 1st of January, 1871, that is all. He makes him his own accuser; he holds up before him his own written confession of guilt, and appalled by the prospect, bewildered at the idea of the publication of that letter, what does he do? He writes this:

"May 31, 1873. To the Trustees of Plymouth Church: I tender herewith my resignation of the sacred ministry of Plymouth Church. For two years I have stood with great sorrow amongst you, in order to shield from shame a certain household. Since a recent publication makes this no longer possible, I resign my ministry and retire to private life.

"HENRY WARD BEECHER."

With that he goes to Moulton on Saturday night, May 31st, 1873, and delivers it to him. Moulton then chides him and calls him a coward. He takes this card, Theodore Tilton being



present, not in the same part of the house with him, but there at Moulton's—he takes this card, this letter of resignation, and shows it to Mr. Moulton. That is what Mr. Beecher proposed to do to end this.

Theodore Tilton turns to Mr. Moulton and says :

"If he publishes that with such a reason, I will shoot him on the spot. If he resigns his ministry with such a stain as that left upon my family, I will not stand it : I will not permit it. As well might he come out and confess at once, because *that* is a confession, and it would brand and blast my family.

"Among," says Mr. Beecher, "the last desperate efforts to restrain him from overwhelming himself, his family, myself, the Church, and the whole community with the fetid flood of scandal, which he had by this time accumulated, were those connected with the charges of Mr. West. \* \* Mr. Moulton insisted that everything must be done to prevent this trial, as the Examining Committee was likely to be equally divided, whether the facts sustained Mr. Tilton's plea, whether he was out of the Church or not. I was so determined to carry out my pledges to Moulton, for him, and do all in human power to save him even from himself, that I was ready to resign, if that would stop the scandal. I wrote a letter of resignation, not referring to the charges. It was not delivered. I considered that it would be a useless sacrifice to do it."

In connection with this fact let me call your attention to the fact that the charges referred to by Mr. Beecher as being the occasion for writing this letter of resignation, on the 30th of May, 1873, to wit, the charges preferred by Mr. West against Mr. Tilton, were not made until the 17th of the following October. The plea to which he referred as being the cause, and concerning which Mr. Moulton thought the Committee would be divided, was not made until the 20th of October following, and at the time that this letter of resignation was written the charges had not been made ; no steps had been taken concerning them. Talk had been had in the church with reference to investigating the facts connected with the Woodhull publication, in reference to Mr. Tilton's connection with the church after the publication of the biography, but the first notification that Mr. Beecher had, or intimation that these charges were to be preferred, was on the 25th of June, 1873, and the charges were made the following October, the plea the 20th of October. No, gentlemen, it was not to save Mr. Tilton from the investigation of these charges that Mr. Beecher wrote his letter of resignation and was willing to resign from Plymouth Church and retire to private life, but it was because Mr. Tilton was going to publish his letter of contrition which he regarded, and which is a confession of guilt; that is all. Mr. Tilton proposed to make no accusation against him; he made no accusation in this card; he made no charge whatever. He let Mr. Beecher be his own accuser. He says :

"I will publish that card, and all that it contains aside from the mere introductory portion of it is the letter of contrition."

Appalled at the prospect, driven to frenzy at the idea of that letter being made public, he writes his resignation, and offers to retire from Plymouth Church, and it was only the course taken by Mr. Moulton and the courage that Mr. Moulton infused in him on that occasion, that saved Mr. Beecher to Plymouth Church. On the 31st of May, 1873, Henry Ward Beecher would have ceased to be the pastor of Plymouth Church had it not been for Francis D. Moulton, of whom that

very church subsequently cried out: "Kill him! kill him!" Do you doubt, gentlemen, what this letter of contrition refers to? Do you doubt its meaning and its import when the mere idea of its publication drove the author of that letter to resign from his church, from his position; willing to give up his ministry and retire to private life simply because a recent publication made it no longer possible for him to maintain these secrets? The publication he refers to was the "tripartite covenant," and the comment resulting from that, unfavorable to Mr. Tilton, and Mr. Tilton's administration at last, at last to relieve himself from this unjust odium, or compel Mr. Beecher to relieve him; and when that was brought to his mind, and he could see no way out of it at that time, wearied with his sufferings he determined to put an end to them in this way, by resigning his ministry and retiring to private life.

And on the following morning, June 1st, in utter despair and desolation at the prospect before him, he writes to Mr. Moulton this letter:

"The whole earth is tranquil and the heaven is serene, as befits one who is about to finish his world life. I could do nothing on Saturday; my head was confused." (Saturday was the day that his attention was called to the intended publication of that letter of contrition.) "I have determined to make no more resistance. Theodore's temperament is such that the future, even if temporarily earned, would be absolutely worthless, filled with abrupt changes, rendering me liable at any hour or day to be obliged to stultify all the devices by which we have saved ourselves. It is only fair that he should know that the publication of the card which he proposes would leave him worse off than before."

What is there in this card that was going to so affect Mr. Tilton? What is there in it that is going to leave him worse off than before? What is it that is going to leave him so badly off? Why, because the crime against his family will then be revealed. "He now has the knowledge of it, but few know it. The publication of that card will leave him worse off, because that will reveal the fact that a blight has come upon his family, and a blight upon the children to which it attaches. That is why the card would leave him worse off than before. Better suffer now even as you are suffering than publish that card, because, if you do, you reveal the crime; in revealing the crime you blast your own family. "The agreement was made after my letter through you was written." This is the letter which, through him, was written; he had it a year.

"He had condoned his wife's fault. He had enjoined upon me with the utmost earnestness and solemnity not to betray his wife, nor leave his children to a blight. I had honestly and earnestly joined in the purpose, and this has been perverted."

What did he mean when he enjoined upon him with this earnestness not to leave his children to a blight? Why, he implored him not to make a confession, that would reveal the guilt, not to do as another faithful member of his church was advising him to do, make a confession to his church of the crime that he had committed. Mr. Tilton implored him not to make such a confession, because such a confession would leave his children to a blight. And that is what he means when he says that Tilton had enjoined upon him with the utmost earnestness and solemnity, not to betray his wife, nor leave his children to a blight.

"Don't confess your crime; if you do, you leave my children to a blight." He promised not to confess, and but for that promise, or but for that appeal, in all probability, he would have yielded to the appeal of another who counseled him to confess before his church, as he had stated he had confessed before his God, and obtain their forgiveness, as he professed to have obtained the forgiveness of his God.

"I shall write for the public a statement that will bear the light of the judgment day. God will take care of me and mine. But, oh! that I could put in golden letters my deep sense of your faithful, earnest, undying fidelity, your disinterested friendship! Your noble wife, too, has been to me one of God's comforters. Therefore, there is no use in further trying. I have a strong feeling upon me, and it brings great peace with it, that I am spending my last Sunday and preaching my last sermon."

"I shall write a statement that will bear the light of the judgment day."

I shall confess before my Church and before the world the sin that I have committed, and end my earthly suffering by taking my own life. If the letter means anything other than this, I should like to hear it explained. "He had condoned his wife's fault." What had his wife done? What had she been charged with doing? What fault had she committed? His advice to her was no fault. Mr. Beecher's advice to his wife, favoring a separation, was no fault of Mrs. Tilton's that required condonement at the hands of her husband. "He had condoned his wife's fault." He had implored him not to leave his children to a blight. What was going to cast a blight upon the children but the one crime that we charge? That is the crime that would cast a blight upon the children, and the only crime that would. But, as I have said, gentlemen, on this occasion, on the 31st of May, 1873, Mr. Moulton saved Mr. Beecher to Plymouth Church. Now, in answer to the letter which was written, to which I have called your attention, on Sunday morning, June 1st, Mr. Moulton immediately sent a letter, from which I will read now but one sentence:

"June 1st.—I don't think it impossible to frame a letter which will cover the case."

On the evening of June the 1st, Mr. Carpenter, to whom I have alluded, attended Plymouth Church. After the service was over, Mr. Beecher called Mr. Carpenter aside and said to him in great anxiety, "Have you seen Theodore?" He replied, "No;" and then Mr. Beecher said, "He is going to publish my letter. Mr. Carpenter replied, "Well, what of it?"

The answer came, "It will be my ruin and his, too, because he cannot rise on my ruin." What, I ask you, in view of these accumulated and accumulating facts, does that letter refer to, the bare publication of which is going to destroy its authors and destroy the man for whom it was written? What does it mean? "It will be my ruin and his too." How will it be his ruin? How will it ruin either Mr. Beecher or Mr. Tilton, except there is but the one inference to be drawn from that letter? And there is but the one inference, and that is the existence of criminal relation between Mr. Beecher and Mrs. Tilton, the knowledge of which would ruin both, would cast a blight upon both, and ruin his family. After church he goes around to Mr. Moulton's in company with Mr. Carpenter, and on his way exclaims:

"I can bear anything but the suffering of others for my fault.

If Theodore will not do this thing, publish that letter, if he will withhold it, I will divide my fame and my fortune with him."

Oh! what terrible thing does this letter allude to that should induce such expressions, that should make him fear that the knowledge of its existence would bring ruin upon him? To suppress its publication he would divide his fortune and divide his fame. What, what I ask you, does it allude to? Need I tell you, as sensible, reasoning, intelligent men, that there is but one crime, but one domestic crime that a man can be guilty of that would lead to such consequences as the publication of this letter would have led, in the estimation of Mr. Beecher at that time? Well, he went around that night, the evening of the 31st of May, 1873, to Moulton's, his faithful friend and true, as Mr. Beecher said as late as the 5th of July last, putting his arms around his neck in the presence of Mr. Robinson—"God never raised up a truer friend to man than he."

#### BEECHER'S LETTER EXONERATING TILTON.

And this true friend, when he went to him in his sore distress and trouble, not knowing what to do, which way to turn, devised a mode of temporary escape, and instead of writing a statement that, as intimated in the letter of the 1st, would bear the light of the judgment day, this card is prepared:

"To the Editor of *The Brooklyn Eagle*, June 1, 1873. DEAR SIR: I have maintained silence respecting the slanders which have for some time past followed me. I should not speak now but for the sake of relieving another of unjust imputations. The document that was recently published bearing my name with others, was published without consultation either with me or with Mr. Tilton, nor with any authorization from us. If that document should lead the public to regard Theodore Tilton as the author of the calumnies to which it alludes, it will do him great injustice. I am unwilling that he should even seem to be responsible for unjust statements whose force was derived wholly from others."

The unjust imputations referred to in this card were that Mr. Tilton had slandered Mr. Beecher, had accused him falsely of committing crime, and had been forgiven by him. To relieve him from these unjust imputations of having done him a wrong he published this, and he says, in effect, "Mr. Tilton has not slandered me, Mr. Tilton has not wronged me, and I should be very sorry if the public should receive that impression, that he has slandered me, because others and not he, are to blame; he has not slandered me." This, gentlemen, was June 2, 1873. It was the day after the writing of the letter to which I have called your attention. It was two days after the writing of the letter of resignation. With the publication of that, Mr. Tilton was satisfied, and the card that he intended to publish was withheld. All that he asked was that he should not be held up in public as a slanderer against Mr. Beecher, when he had not slandered him; that he should not be put in the attitude of having been magnanimously forgiven by Mr. Beecher, when it was he who had shown the magnanimity towards Mr. Beecher. All that he asked was not that the secret be exposed, but that Mr. Beecher would say some word, however little, to relieve him from this unjust imputation. And when Mr. Beecher



spoke the word that he did in that card on Monday, June 2, Mr. Tilton refrained from publishing his card, or rather refrained from publishing Mr. Beecher's own accusation against himself. As might naturally be expected, the publication of such a card from Mr. Beecher at such a time and under such circumstances caused a good deal of anxious inquiry on the part of members of the church. They could not understand why it was that Mr. Beecher should publish a card of that kind, relieving Mr. Tilton from the imputation of having slandered him, of having spoken falsely against him. They could not understand this, because at that time, June 2, 1873, or prior to that time, Mr. Tilton had published the Woodhull biography. Upon the publication of that, steps were taken in the church to have his name dropped from the roll of membership. He had presided at the Steinway Hall meeting, which had subjected him to a good deal of criticism. His letter to Bowen had been published, in which Bowen made certain charges of moral delinquency against Mr. Beecher. His letter to a complaining friend had been published, in which he said :

"So when you prompt me to speak for her, you countervail her more Christian mandate of silence. Moreover, after all, the chief victim of the public displeasure is myself alone, and so long as this is happily the case, I shall try with patience to keep my answer within my own breast, lest it shoot forth like a thunderbolt through other hearts."

His story to Mrs. Bradshaw had been told two years. Mr. Beecher was aware of the fact. Members in his church knew that that story had been told to Mrs. Bradshaw, that he had accused him directly with criminal intimacy with his wife. His criticisms upon Mr. Beecher's course had been published in *The Golden Age*, containing, among others, the following language

"To think one thing and say another; to hold one philosophy in public and another in private; to offer one morality to the multitude and keep another for one's-self, is a degradation of no man so much as a minister and a blot upon nothing so much as upon religion."

It was after all these things had taken place, it was after Mr. Tilton had done all these things, on the 2d of June, 1873, that Mr. Beecher published this card concerning him, relieving him from all these unjust imputations, giving it to be understood by the world that he had never injured him, never spoken untruthfully of and concerning him, which was the truth. So that you see, gentlemen, that it was the most natural thing in the world that Mr. Beecher's friends should be astonished, knowing the facts, knowing that Mr. Tilton had accused him of adultery with his wife, knowing that he had done these things. I say it was the most natural thing in the world that they should be astonished at such a letter at such a time from Mr. Beecher in regard to Mr. Tilton. But he had no alternative. Better to resort to that device, better bear the criticisms that that letter evoked, better bear the blame that that would call down upon him,—better do anything than have his letter—his own letter—published to the world. It would proclaim his guilt. It was to prevent that catastrophe that he consented to the publication of this card. He had no alternative—"Do that, or I will do this" was the command of

Mr. Tilton upon that occasion. Guided by the wise counsels of Mr. Moulton, he published this card.

#### THE PERPLEXITIES THICKEN.

For the moment, again, the storm had passed. The friend whom God had sent him in his sore extremity had with his hand again tied up the storm that was about to burst on their heads and on our heads, and again there was partial peace concerning this crime. But, as I have said before, it could not last long. Deeper and deeper was he being involved in difficulty. His extrication from one difficulty involved him in a still greater. Temporarily preventing the publication of this letter induced inquiry concerning its publication on the part of his friends and members of his congregation. So it goes on, step by step, one difficulty coming up after another, and as fast as one device is resorted to, another becomes requisite, until the difficulties at last so accumulate that no power on earth can prevent the storm. The hand that for four years had held the gathering storm, tied up at last, fell powerless by the side of his friend, and the storm came. And when the storm came, all the fury of the gale was attempted to be turned upon the head of this God-sent friend who for so long a period had stayed off the day of reckoning.

#### BEECHER'S DREAD OF WOMEN'S TONGUES.

Having allayed the excitement in the church, having prevented the investigation there, other difficulties come up. Steps are being taken to initiate a council, and in his anxiety to ward off the threatening dangers that were gathering about him, he again appeals to his friend :

"Sunday night," (no date) : "My dear friend : . . . *The Eagle* ought to have nothing to-night. It is that meddling which stirs up our folks. Neither you nor Theodore ought to be troubled by the side which you served so faithfully in public. The Deacons' meeting, I think, is adjourned. I saw Bell. It was a friendly movement. The only next near danger is the women Morrell, Bradshaw, and the poor, dear child."

And what was this danger? Mrs. Morrell knew and Mrs. Bradshaw knew this dread secret, and he was afraid that the poor, dear child, as he calls her, too, might talk ; might confess again. And it was from them that he apprehended danger. How to get rid of that, how to guard against that, he did not know. Always in these extremities, in these difficulties, he turns to his friend Moulton.

"If the papers will hold off a month we can ride out the gale, and make safe anchorage, and then, when once we are in deep, tranquil waters, we will all join hands in a profound and genuine *Laus-Deo*, for through such a wilderness only a Divine Providence could have led us undevoured by the open-mouthed beasts that lay in wait for our lives."

And all this about nothing ! All this because he had given, not injudicious, but judicious advice—advice that it was his duty to give.

"Sunday, A. M.," no date—upon the same point—"Your interview last night was very beneficial ; it gave confidence. This must be looked after. It is vain to build if the foundations sink under every effort."

Your interview gave confidence ; your interview with Halliday last night gave confidence. How did it give confidence. Why, by that faithfulness which characterized his course

for four years, he had allayed Mr. Halliday's suspicions, and that had given confidence. That is the point that must be looked to. Under no consideration, under no circumstance must the truth be known, and whenever, by any device, whether by an evasive answer, or by a suggestion made by his friend, then he is sent of the Deity to protect and to serve Him! But, as I said, at last the charges came, and one specification of those charges is, that he had stated that he had discovered a criminal intimacy between Mr. Beecher and his wife, and the name of as respectable, as Christian a woman as lives in the City of Brooklyn was given as a witness. And with this fact upon the records of the Church, he has been denounced throughout the land as having preferred a false charge, and never until after the Investigating Committee was appointed, having accused his pastor with the crime of adultery with his wife.

There is the record, known and read of all connected with the church. Well, this charge made by Mr. West, not yielding to the counsels and the persuasions of Mr. Beecher, but actuated by a conscientious sense of his own duty in making the charge; here was another contingency to be met. Other devices must be resorted to to prevent this investigation, because if this investigation goes on, most assuredly the truth must come out. What device can we resort to? Again he turns to his God-sent friend Moulton, and the device is arranged and agreed upon by Mr. Beecher, by Mr. Moulton and by Mr. Tilton. And this is the device. Mr. Tilton is to write a letter stating that four years ago he had withdrawn voluntarily from the church, since which time he had not been a member, and therefore was not amenable to their process. Such a letter was written; and for that device, when Mr. Beecher the next day met him, he clasped him by the hands and exclaimed, "Theodore, God inspired you to write that letter." Well, that was a successful device. It prevented the investigation into the truth of the charge that Mr. West had made against Mr. Tilton of slandering the pastor of the church. But what was to be done in order to prevent, in the conclusion of that matter, any reflection upon Mr. Tilton? A simple preamble reciting the facts of his having voluntarily withdrawn from the Church, and then a resolution that the record be corrected in accordance with the fact was agreed upon.

#### TILTON'S CHALLENGE TO BEECHER IN PLYMOUTH CHURCH.

But on the 31st day of October, when the Committee were to make their report, Mr. Tilton hearing that a different report was to be made by the Committee and that he was to be placed in the attitude of having shrunk from his duty and of having avoided investigation or trial by this special plea of non-membership, wrote a letter to the Committee which was shown to Mr. Beecher, a sentence of which I will read:

Mr. Beech—What is the date of it?

Mr. Morris—31st of October, 1873. "I therefore say, first, I have never spoken against Mr. Beecher falsely; and second, if either he or the Committee shall request me to waive my non-membership and take my position once again as a member, I will do so long enough to appear this evening at the meeting to answer before the assembled congregation the following ques-

tion from either Mr. Beecher or the Committee, namely, 'Have you, Theodore Tilton, ever spoken against Henry Ward Beecher falsely?'

And he did go there that night and attended this meeting of Plymouth Church, and when the report was made reflecting upon him and putting him in the attitude of having slandered Mr. Beecher, and then of having failed to meet the charge by putting in the special plea of non-membership, he went there before the assembled congregation, and he said in the presence of that assembled congregation and in the presence of Mr. Beecher:

"I therefore have come here to-night, not from any obligation of membership, since I am not a member, and not summoned by your Committee, for no Committee has summoned me, (it was a mere notification), but of my own free will, prompted by my self-respect, and as a matter vital to my life and honor, to say in Mr. Beecher's presence, surrounded here by his friends, that if I have slandered him I am ready to answer for it to the man whom I have slandered. If, therefore, the minister of this church has anything whereof to accuse me, let him now speak, and I shall answer, as God is my judge."

What is the answer? What would have been the answer of an innocent man, and what the answer of a guilty man? Hear it:

"I desire to say further," says Mr. Beecher, "that I do not believe that Mr. Tilton has desired in any way whatever to shirk his proper responsibility, or to evade any proper charge that might be made by the Church. He asks if I have any charge to make against him. I have none. Whatever differences have been between us have been amicably adjusted, and, so far as I am concerned, buried. I have no charges."

On the 20th of July, 1874, the defendant declared that he could not delay for an hour to defend the reputation of Mrs. Elizabeth R. Tilton, upon whose name, in connection with his, her husband had attempted to pour shame. And yet, when the publication was made on the 2d of November, 1873, the defendant did not rush to the defense of the honor of this Christian woman. And when Mr. West, in 1873, charged that Mr. Tilton had charged him with having committed adultery with his wife, giving the name of the witness, he then did not rush to the defense of the honor of Elizabeth R. Tilton. She, a member of his church, charged with this crime. He charged with this crime with her, instead of coming to her defense, the defense of her honor, he resorts to every device that he can imagine for the purpose of avoiding the investigation, for the purpose of preventing the opportunity of vindicating her chastity, if he could, to keep the thing buried up, and, in his own language, "thought that the Church had better try and live it down," while her reputation for chastity remained under this cloud. No attempt, then, to defend the honor of Mrs. Elizabeth R. Tilton. And when these charges are made, coming from such a source as they did, the Church, anxious for an investigation, the opportunity then presented him of vindicating the honor of Elizabeth R. Tilton, does he do it? No; but he tries to prevent it by a trick, by a device of words, leaving her to rest under this charge of having been debauched by her own pastor! No attempt then to rush to her



rescue. Too late now to say that he could not rest for one hour when her honor was attacked, but must rush to her rescue. Too late now to play that role of the defender of the honor of Elizabeth R. Tilton! The day is past. Years ago the opportunity was presented, because the charge was made against him when her husband was away in a distant State, when it was his duty, when he was called upon by every obligation of honor, of manhood, to defend, then, Elizabeth R. Tilton, and if the infamous charge was false to brand it as false. But he does not come. He is as silent as the grave, and so when opportunity after opportunity presents itself, she all the time resting under these charges and these imputations, instead of rushing to her rescue and defending her honor, he tries to prevent the opportunity, to set aside the opportunity in which he might defend her honor, and leaves her to sink lower and lower in the depths of infamy. Too late, I say, now, to play the role of defender of the honor of Elizabeth R. Tilton.

The following month, during November, 1873, preliminary steps were taken to call the council. On the 9th of November—Sunday—Mr. Beecher met Mr. Tilton at Moulton's, his friend, where he was in the habit of going almost daily, and he said, "Theodore, if you don't turn against me, Dr. Storrs can do me no harm." And during the council a criticism was made upon the conduct of Elizabeth R. Tilton in having accused Mr. Beecher, by a member of his own church, and the very thought of such a criticism at such a time against Mrs. Tilton and Mr. Tilton, filled him with horror; and he writes again to his friend Moulton (for he always turned to him in these hours of sore extremity) and he says—again it is Sunday—"Sunday night"—all these plottings and plannings, pretty much, were the work of the Sabbath:

"My dear Frank, is there to be no end to this trouble? Is wave to follow wave in endless succession? I was cut to the heart when C. showed me the shameful paragraph from *The Union*. Its cruelty is beyond expression. I felt like lying down and saying, 'I am tired, tired, tired of living or of trying to resist the devil of mischief.'"

Every person who did anything that seemed to point to an investigation or a development of these facts was the devil of mischief.

"I would rather have a javelin launched against me a hundred times than against those that have suffered so much, but there are some slight alleviations. The paragraph came when the public mind was engaged with the council, and with Theodore's letters. I hope it will pass without further notice. I must be again, as I have heretofore been, indebted to you for judicious counsel. On this new and flagrant element my innermost soul longs for peace; if that cannot be, for death."

And so you see, gentlemen, the terrible anxiety and terrible agony that every step, that every movement, that everything that is done tending to bring out the facts in this case, causes Mr. Beecher. I have not read the whole of this letter; I will leave some portions of it, as it is not necessary to do, in presenting my view, until we present it formally in proof.

Still later he writes another letter to Mr. Moulton, in which he says:

"Mr. Storrs has determined to force a conflict, and to use one of us to destroy the other, if possible. I am in hopes that

Theodore, who has borne so much, will not consent to be a flail in Storrs's hands to crush me."

In the Spring of 1874, of the charge of adultery, made the 30th of December, 1870, he writes this letter to Mr. Moulton, and says he hopes that Theodore, "who has borne so much, will not consent to be a flail in Storrs's hands to crush me." And after the council was ended that had given so much trouble, and so much anxiety and so much fear, then again arose another difficulty—a difficulty this time more formidable than all the others.

#### THE CULMINATING POINT—DR. BACON'S LETTER.

It was a difficulty that finally culminated in the exposure, and was the means of bringing us here in this Court, and before this jury. After the adjournment of the Council, unfavorable criticisms, as after the publication of the "tripartite covenant," were made against Mr. Tilton, and he was held up to the world as one of the worst of men, the creature of Mr. Beecher's magnanimity, and he (Beecher) the most magnanimous and generous of men. Again Mr. Beecher is appealed to to stop this cry, but again his courage fails him, again he manifests his cowardice, because to say to these men who were thus accusing Mr. Tilton, to say to Dr. Bacon: "Don't say that about Theodore, it is not true, it is not correct;" or, "Don't abuse him, it is not right; he has done nothing that justifies that abuse. I have wronged him; I have given him cause, don't say that; stop, please, stop, please, stop your abuse." He dare not do that; he had not the courage to do it, because Dr. Bacon would then have said: "What has this man done that he now takes blame upon himself, and that he now receives, and after all that has been said, and after all these years that he now comes forward and relieves Mr. Tilton?" He could not do it. You see, gentlemen, he could not do it. No, he had not courage to do it, and he let the thing float along, taking the chances. It could not be worse. To do that would place him in the awful position of having done wrong, and these men, then, would renew their inquiry and their energy to ascertain what the truth was, and he stood paralyzed, appalled at the prospect that was before him, and at last, unwilling to do anything to relieve Mr. Tilton, Mr. Tilton relieved himself. He published the Bacon letter that has now become historic, and ever will be. And what was the point in that letter that rang throughout Christendom? What was it that brought on this consternation? What was it that made the Christian world stand aghast? What was it? Any charge that he had made against him? Oh! no, he simply said he had been guilty of an offense against him and his family some years ago, but the people paid no attention to that. The press made no comments upon that. That they didn't look at. An offense! The word was indefinite, and that was not the thing that caused such commotion, that caused such excitement, that caused everybody to ask every person he met, "What does this mean? What great crime has Mr. Beecher been guilty of?" What was it? Oh, it was only a quotation from the letter of contrition! A few lines from that letter—a few lines written by Henry Ward

Beecher himself sent dismay throughout the land. People said and people believed that the great preacher of the land had fallen, and that he had sinned against the commandments, that he had sinned against the precepts of our Savior—that he had committed adultery with a member of his own church, that he had debauched the wife of his bosom friend. What was it? What was it that sent this consternation throughout the land? It was Henry Ward Beecher accusing himself, standing before the world as his own accuser. Do you still doubt, gentlemen, to what that letter refers? Do you still doubt, in the face of the facts that I have already presented to you, that our charge is true, and that Henry Ward Beecher did debauch the wife of Theodore Tilton, the plaintiff? Do you doubt it? If you do, still I have hope, because I will yet present to you evidence still more conclusive, still more overwhelming. I don't mean to leave this case until you are convinced. We don't mean to leave this Court until we go out vindicated. We don't mean to leave until justice has been vindicated, and until a proper malediction, by your verdict, shall have been given to this crime, this great crime that has been committed by Henry Ward Beecher against the peace, against the family of Theodore Tilton, and against the morals of the world.

[To the Court.] If your Honor please, I can close at the morning session, I think, without occupying the whole of it. I have been sick and laboring under a great deal of pain for two days, or I should have closed to-day. I will ask about an hour in the morning.

Judge Neilson—I can appreciate the very great labor that rests upon the counsel, of course, still I was very desirous that you should have closed to-day, if you could.

Mr. Morris—I would like to have an hour in the morning. I am not physically able to conclude my opening now.

Judge Neilson—I will say to the counsel that I have handed to the foreman some tickets of entrance for his friends. [To the jury.] Gentlemen, you will remember the injunction I have heretofore given you as to this case, and the importance of your not conversing about it with each other. Please attend to-morrow morning here punctually at 11 o'clock.

### THIRD DAY'S PROCEEDINGS.

#### MR. MOULTON UNDER OATH.

CLOSE OF MR. MORRIS'S OPENING ADDRESS—THE COURSE OF PLYMOUTH CHURCH DENOUNCED BEFORE MANY OF THE MEMBERS—MR. CARPENTER'S TESTIMONY TO BE VERY IMPORTANT—AUGUSTUS MAVERICK THE FIRST AND FRANCIS D. MOULTON THE SECOND WITNESS.

Mr. Morris closed the opening address in the Brooklyn scandal suit on the morning of Jan. 13, and two witnesses were called to the stand—Augustus Maverick and Francis D. Moulton. Mr. Morris reviewed the proceedings of the Plymouth Church Investigating Committee after the publication of Mr. Til-

ton's letter to the Rev. Dr. Bacon, and contended that every act of Mr. Beecher in connection with that inquiry was virtually an admission of guilt. He referred to two of the witnesses for the prosecution—Francis B. Carpenter and Francis D. Moulton. The announcement that Mr. Carpenter would testify that Mr. Beecher had confessed guilt to him was a surprise to every one. After recess Augustus Maverick gave unimportant testimony in relation to Mr. Tilton's marriage; and then Mr. Moulton was examined by ex-Judge Fullerton. His testimony related to the first meeting between Mr. Tilton and Mr. Beecher at his house, the circumstances under which the apology was written, and the subsequent interview between himself and Mr. Beecher. Mr. Moulton will resume his testimony to-day.

#### ELEMENTS OF THE AUDIENCE.

Mr. Tilton's friends were in the gallery on Wednesday, Jan. 13; Mr. Beecher's in the seats back of the lawyers' tables. One might almost have imagined that it was a Friday night prayer-meeting, so numerous were the representatives of Plymouth Church. Besides Mr. Beecher and Messrs. Shearman and Hill, there were the Rev. S. P. Halliday, Roswell S. Benedict, Abijah Whitney, Elliott C. Davidson, B. G. Carpenter, Wallace E. Caldwell, E. A. Studwell, Moses K. Moody, Wm. B. Smith, George Christensen, Jas. H. Watson, Mr. Bullard and sons, Jacob B. Murray, Edward J. Ovington, Henry M. Cleveland, Capt. Eldredge, Prof. R. W. Raymond, Horatio King, Moses S. Beach, and many more. Mr. and Mrs. Beecher were thus surrounded by their friends, and breathed a Plymouth Church atmosphere. They entered the court-room quietly, and took seats slightly to the left of those which they had occupied on the previous day. A bouquet of flowers was awaiting them on one of the tables, Mrs. George Christensen repeating the attention which she had previously shown. Their two sons were on their left. Henry M. Cleveland, a member of the Investigating Committee, was on the right, and Augustus Storrs, another member, the Rev. S. B. Halliday, Prof. Raymond, and E. J. Ovington were close at hand. Mr. Morris's address was virtually an arraignment of Plymouth Church as well as of its pastor, and this body-guard from the Church seemed to be drawn together by an instinct of self-protection. The denunciations of the policy of the Church and of the hollowness of



the investigation were received with a cynical smile, and when Mr. Moulton faced the audience from the witness-stand, many a brow in the Plymouth section of the house was clouded, and there were fierce glances of hostility, which reminded one of that stormy session in Plymouth Church when the report of the Committee was adopted, and one man was hissed and hissed.

Mrs. Tilton was accompanied by Mrs. Anna M. Field and Mrs. Thomas G. Shearman, and was escorted to the court-room by Edward J. Ovington and ex-Judge Morse. The two ladies and Mrs. Tilton's father-in-law sat apart from Mr. and Mrs. Tilton, nearly in the center of the room. Mrs. Tilton's slight, retiring figure is a foil to the more commanding presence of Mrs. Field. Before the proceedings opened there was a buzz of conversation in this part of the room, and Mrs. Tilton chatted gaily with her friends, now and then glancing timidly in the direction of her husband.

He sat alone some distance off, with his back turned and his eyes riveted upon the jury-box. His attention is absorbed in this case and he wastes no side-glances upon his estranged wife or her pastor. He rarely smiles, and his features are as calm and immutable as Mrs. Beecher's. Ex-Judge Fullerton sat between him and Mr. Moulton during the morning session. In the afternoon Mr. Tilton was the center of the circle of his counsel, and made frequent suggestions to them.

Mr. Tilton's counsel referred several times in a sneering way to the spectators as "Mr. Beecher's audience," and even threatened to bring in their own body of partisans at the next session. During the recess the tables of the counsel were moved, and it was charged that the Plymouth Church body-guard were driving Mr. Tilton's counsel into a corner near the bench. Although Mr. Tilton had only one friend close at hand besides his counsel, it was evident that he had many partisans in the audience, for when Mr. Morris concluded, the applause, although it was instantly checked, was emphatic and hearty. It came mainly from the galleries.

Among the spectators were the Rev. Mr. Maynard, the Rev. Mr. Eddy of Jersey City, the Rev. Mr. Buckley, the Rev. T. De Witt Talmage, Alderman Ripley Ropes, Police Captain McLaughlin, County Treasurer Gardner, Sheriff Williams, ex-Senator Pearce and Senator Murphy. Mr. Talmage shook hands heartily with Mr. Beecher.

The spectators throughout the session stared at the

four principal actors in this scandal tragedy. The impression is a very natural one that innocence and guilt cannot look alike, and that the features of Mr. Beecher and Mrs. Tilton on one side, or of Mr. Tilton and Mr. Moulton on the other, will, under the tension of excitement, betray the stifled secret of treason and self-loathing. Every partisan in the court-room—and outside of the bench and jury-box nearly every spectator is a partisan—is confident that he detects, unerringly, the traces of innocence or guilt in the upturned faces of the three men and the one woman. The "Tiltonite" points at Mr. Beecher, and whispers: "That face is flushed with shame; his saddened, careworn features are a confession of guilt. And Mrs. Tilton, too, shrinks back for fear of detection!" The "Beecherite," on the other hand, shakes his head as he glances at Mr. Tilton, and rejoins, in an underbreath: "There is an unrestful spirit beneath that marble calm, and his restless eyes are fired with recklessness. And Mr. Moulton—bah!" The truth is that two of the actors in this dramatic scene wear masks which fit so closely that no one can look behind them. The four faces seem to tell the same story of innocence, weariness, and anxiety. The treason and sin which must breed nightshade in two of those souls are repressed and hidden away. The jury cannot decide this case on the merits of these faces.

There was a crush in the court-room, morning and afternoon. About 3,000 applicants were turned away from the doors, and every foot of space inside was occupied. After running the blockade of the corridors the spectators were unwilling to surrender their places at noon, and the gallery lost its lunch, read newspapers during the intermission, and when the proceedings were resumed listened with unabated interest. One or two near-sighted people had opera-glasses, and used them to the annoyance of the central figures in this court drama. Judge Neilson, who has treated the audience with great indulgence, is evidently losing temper, and has intimated that there will be fewer spectators if his warnings pass unheeded. The morbid curiosity of the spectators and loungers in the corridors was illustrated at the adjournment of the proceedings at noon and at night. Files of people stood in the hall, and when the ladies appeared followed them pell-mell to their carriages. A window leading to a wide balcony in the rear of the Court-house was opened, and men and boys rushed out to take advantage of this coign of vantage until the balcony was black with spectators who were anxious to

watch the departure of the ladies. On the sidewalk a small group soon became a restless, vulgar crowd of starers. Such curiosity as this should be tempered with decency.

#### MR. MORRIS'S PERORATION.

Mr. Morris resumed his address soon after the opening of the court, and spoke for an hour and 20 minutes. His voice was clear and his delivery very effective at the outset, and although his hoarseness increased, his impassioned sentences lost none of their power. His denunciations of the Investigating Committee as constituted and managed with the single aim of stifling investigation, and his passionate accusation that Plymouth Church had falsified and suppressed its records, were delivered in ringing tones which set the teeth of the members of that Church on edge, and brought flushes of anger to their faces. Mr. Cleveland, at Mr. Beecher's elbow, could not control himself, but overcome with excitement moved about restlessly in his chair. Mr. Morris referred in the next breath to the mysterious Redpath negotiations in Boston, in which Mr. Cleveland once took great interest, and the agitation of Mr. Beecher's neighbor was stimulated. As Mr. Morris referred to the crisis in the Tilton household, when Mrs. Tilton deserted her husband and went to live "with the friends of her seducer," the lady's face flushed. But harder things were yet in store for her, such as the passage toward the close: "Let the words 'death and destruction to the seducer' be written over every door in the land."

In reading the statement which Mr. Beecher wished to have Mr. Tilton make before the Committee, the speaker's voice had a soft, sneering tone which contrasted favorably with the passionate invectives which preceded and followed the passage. His brief summary of the strongest points against Mr. Beecher was evidently modeled after the recapitulation in the second statement of Mr. Tilton. He then brushed aside the suspicions that his client could have made a false charge of this nature, and ingeniously quoted passages from Mr. Beecher's correspondence and writings in which a high opinion of Mr. Tilton was expressed. Mr. Moulton was introduced as a witness with similar skill by the citation of portions of Mr. Beecher's letters in which his trust in his mutual friend was warmly acknowledged. The "Plymouth section" smiled satirically when Mr. Moulton was eulogized as one who "had stood between the public and the truth, damming up the truth," until he was charged

with blackmail. All this time Mr. Moulton was twirling his mustache, his face betraying some annoyance when an indirect reference was made to the revenue complications of his firm. Mr. Morris made perhaps his most ingenious turn when he quoted a splendid passage from one of Mr. Beecher's sermons, delivered 20 years ago, in which an ideal adulterer and his victim were vividly portrayed. When he announced the author's name, Mr. Beecher made no attempt to conceal his amusement. The peroration was delivered so ably that applause was inevitable, although it was soon checked by the Judge's frown.

#### MR. MOULTON AS A WITNESS.

At the close of the opening argument a recess was taken until 1:30 o'clock. The common impression was that Theodore Tilton would be the first witness after the intermission, although a few lawyers predicted that the prosecution would steal a march upon the defense by taking Mr. Beecher by surprise. Ex-Judge Fullerton, after an interchange of remarks about the accommodations of the counsel, abruptly called Augustus Maverick to the stand as the first witness. Mr. Fullerton, who conducted the examination, has a full, florid face, with prominent cheek-bones and light hair and mustache. His questions are asked with such directness and simplicity that the witness is encouraged to maintain his self-possession and to answer clearly. He stands erect, with his eyes half-closed and his fingers twirling an eye-glass. An objection from the opposing counsel stirs his blood, and his replies are sharply and quickly made. His work with the first witness was soon ended, for the questions related merely to the marriage and early domestic life of Mr. Tilton.

When the name of Francis D. Moulton was called a buzz of expectation ran through the court-room. There was no response, and the spectators noticed that Mr. Tilton was sitting alone. Ex-Judge Fullerton remarked that Mr. Moulton had been compelled to go to his house to fetch some papers, and would be in the court-room before long. The "Plymouth section" chuckled over this, intimating by their smiles and nods that they had found Mr. Moulton rather uncertain in his movements during the past Summer, and that his tardiness was in keeping with his character. In 10 or 15 minutes he entered the room and quickly took the witness-chair, laying a package of papers on the floor beside him. Mr. Beecher looked him in the face, and during the remainder of the session rarely lost



sight of him. Mr. Moulton crossed his legs, folded his arms in the Napoleonic manner, and looked at the audience, but so many eyes met his gaze that his face reddened and he manifested some nervousness. He swung from side to side, took a knife from his pocket and played with it, straightened himself and then drummed with his fingers on the arm of the chair. His voice was clear at the outset, and it was evident that he intended, if he could, to answer the questions with prompt, business-like precision, like a man of the world. The first impression which he made was rather favorable, his answers being frank, unstudied, and unaffected; but the pauses between the words soon became longer, and some of his rejoinders were given in a lisping, careless manner. When he identified the letters he was studiously careful, subjecting every page to rigid scrutiny, and only assenting after he had called them back and glanced at them again.

His testimony was a repetition of certain portions of his second published statement with a few variations, but every word was listened to by the audience as if it was a fresh thing instead of a stale scandal which the world has learned by heart. After an animated passage between the counsel in reference to a section of Mr. Tilton's famous letter to Mr. Bowen concerning Miss Proctor, the court adjourned until this morning, when the witness will be recalled.

No official report of the trial is being made by the court or lawyers on either side, and yesterday, as on every former occasion when reference to the language of jurors or witnesses became necessary, Judge Neilson directed THE TRIBUNE stenographers to read the language called for from their notes. THE TRIBUNE'S report is, therefore, the authority for the court and lawyers alike.

#### A TRUCE TO LEGAL ASPERITIES.

At the close of the proceedings on Wednesday, Jan. 13, neither counsel nor audience were permitted to leave the court until the jury had retired. The jury once outside of the court-room, there was a rush made for the doors by all the crowd except those who occupied seats in the immediate vicinity of Mr. Beecher, who lingered. It was while the crowd was thus hastily dispersing that a remarkable incident took place.

Mr. Beecher, with a good-natured smile and his usual genial manner, left his own counsel and stepped across the room to the table at which Mr.

Tilton's counsel sat, and reaching across it, saluted Mr. Beach, and then shook his hand. Mr. Tilton, with a stern expression upon his face, stood at this moment within two feet of the clergyman, but did not look in his direction, although he must have heard every word that was uttered.

"If," said Mr. Beecher to Judge Beach laughingly, "if I get out from between the paws of two such lions as you and Fullerton, I'll believe I am innocent, and that is what I came here to find out."

"You forget," said Mr. Beach, pointing to Mr. Evarts, "the Daniel standing among the lions, and closing their mouths."

Mr. Beecher placed one hand on Mr. Shearman's shoulder, and the other on Mr. Evarts, and remarked in a jocular way, "my lions are very harmless animals." Then turning to Mr. Morris he said, "Let me present myself to you, Judge Morris."

The ex-Judge very coldly replied, "Mr. Beecher."

The pastor of Plymouth Church was not to be repulsed in this way and continued:

"I notice that you lawyers, like preachers, know how to deliver long sermons."

There was a slight tinge of sarcasm in Mr. Morris's tones as he retorted. "Yes, Sir; I had a long story to tell."

Mr. Evarts joined in the conversation at this moment, and playfully said:

"Mr. Morris, I noticed that you expatiated only on those things which were against our side."

Mr. Morris answered in the same pleasant manner:

"I thought you could attend to the other things much better than I."

By this time the counsel were surrounded by a large crowd of curious listeners, among the number Mrs. Beecher and several members of Plymouth Church. Mr. Morris was on the point of leaving when Mr. Beecher again addressed him:

"Judge Morris, you should have come to me for a point or two. I could have 'put you up' to some things which would have made your speech appear very different."

Mr. Morris made no reply, and Mr. Tilton for the first time shot a quick glance in which mingled hate and scorn were expressed at the speaker, and then turned to Gen. Pryor. That gentleman had been listening to the conversation with an unmistakable look of disgust on his sharply cut features. Addressing Tilton, he made a brief remark in a contemptuous tone of voice, and the two left the court-room together. Mr. Fullerton did not take part in

the conversation, but looked on with an amused expression.

In the mean time Mrs. Tilton and her lady friends had left the court-room. It was several minutes, however, before Mr. Beecher and Mrs. Beecher could get away. After shaking hands with several in the crowd, they retired through the rear entrance to the Court-house. They were followed to the sidewalk by an immense crowd of men and boys, who jostled and stumbled over each other in their anxiety to catch a glimpse of the defendant and his wife.

In the crowd were many who, having been denied admission to the court-room, had stood in the cold corridors for hours determined to gratify their curiosity in some way. Mr. Beecher and his wife entered a carriage, and were driven rapidly away; and yet the crowd lingered on the sidewalk for several minutes after. Mr. Tilton and his counsel proceeded to Judge Morris's office for the purpose of arranging the letters to be introduced in Mr. Moulton's testimony.

#### THE PROCEEDINGS.

At the reassembling of the Court, on Wednesday, in the Tilton-Beecher case,—it being the eighth day of the trial, and the third day of Ex-Judge Morris' opening address for the plaintiff—Mr. Morris began on the last subdivision of his subject, namely, a resume of the events of the last eighteen months in the scandal, which are so familiar to everybody, embracing the doings of the go-betweens and "the mutual friend," the letters to newspapers, and the proceedings of the Church Committee.

#### THE LETTER OF CONTRITION THE SPARK THAT LIT THE BLAZE.

IF THE COURT PLEASE, GENTLEMEN OF THE JURY, I shall not detain you much longer in what I have to say to you. At the adjournment of the Court yesterday, I was calling your attention to the efforts that had been put forth by the defendant in this case to prevent an investigation, on the part of his church, into the charges of immoralities, which had been made against him, and I had also called your attention to the fact as to how unavailing, during the four years that have passed, have been all the efforts to bury up the fact that we now present to you. As I stated, one difficulty after another presented itself, and no sooner had a threatened investigation been averted by some trick, by some device, than another difficulty arose, and thus they continued to accumulate until at last the dread secret had to be made public: and I had called your attention to the manner in which it was made public, not by a charge against Henry Ward Beecher, but by simply publishing a part of Mr. Beecher's letter of contrition, which was accepted by everybody almost as being a confession of guilt. The publication of that portion of the letter of contrition aroused such a spirit of inquiry both in and out of the Church, that finally Mr.

Beecher was compelled to take action with reference to the matter, and on the 11th day of July, 1874, was published a letter addressed to six gentlemen, three of his congregation and three of the society, requesting them to make a thorough investigation in reference to the letter of apology or contrition; and you must remember that when that letter was published in the papers, with what satisfaction it was received by the friends and advocates of Mr. Beecher. "At last," they say, "we are to have the truth. At last he has taken steps to have a thorough investigation. Now we will know the truth. Now we will know the foundation for these rumors that have been floating about for the last four years. Now we will have a settlement for ever of this matter."

That letter was dated prior to that, on the 27th of June, I think. On the 6th of July Mrs. Tilton, without the knowledge of her husband, without any intimation that a Committee had been appointed, or was contemplated, goes before the Committee and makes a statement. At this time the plaintiff knew nothing about the appointment of a Committee at all, if one was appointed then; and on the morning of the 11th of July Mrs. Tilton abandons her home and seeks shelter with the friends of her seducer; and on that same day this letter is published, and until then, until she had appeared before the Committee, as she stated to her husband, until they had secured her, the letter was not published. Gentlemen, she but followed out the natural course in all such cases. The woman leaves her husband and takes shelter either with, or with the friends of her paramour. But, gentlemen, I call your attention to the very fact and circumstances of the appointing of this Committee as evidence of the guilt of the defendant. Had he been innocent of the charges preferred against him, or had he not been guilty of the crime that we now allege, what would have been his course? What would have been the course of any innocent man seeking a thorough and complete vindication of his character? He would have called upon the regular authorities of the Church to have instituted the proceedings. He would have notified the parties who had charges to make to appear before that Committee and attend its investigation; and he would have accorded the privilege of the party's appearing by counsel if he appeared by counsel.

#### A SEVERE IMPEACHMENT OF THE CHURCH COMMITTEE.

And yet what do we behold with reference to this investigation? Mr. Beecher naming his own Committee, selected from his own personal friends, the accuser having no voice in it—not even the church, except indirectly, was called upon by him to sanction his action. From that investigation the plaintiff is excluded. Before those six friends of Mr. Beecher appear a number of learned and astute lawyers, Mr. Tilton not being permitted to be there and cross-examine witnesses, or to be present to hear what they had to say; and I say, therefore, that the very fact that this Committee was constituted as it was, managed as it was, shows that a thorough and truthful and honest investigation into the facts was not the purpose of the appointment of that Committee. Had a Committee been appointed as it should



have been. had the plaintiff been accorded the rights that should have been accorded to him in that investigation, had he been treated with judicial impartiality, or with any degree of fairness, we would not have been here to-day in this tribunal, you would not have been called upon to discharge the solemn and important duty that you will be called upon to discharge in this case. But with that one-sided and partisan Committee, with their denunciatory report against the plaintiff, in which report the records of the church of which they were members were falsified and suppressed, when he was denounced by this friendly Committee appointed by the defendant to vindicate him at all hazards, and to denounce and convict the plaintiff at all hazards, there was no alternative left but to bring him face to face before an impartial court, before an honest and impartial jury. He did not want this suit brought here. He went to the Committee and he appealed to them to bring him in court. They refused to do it. He did not want to bring this action, because it was necessary that he should claim pecuniary damages. It was the only mode of redress left him. He wanted them to indict him for slander, if he had slandered, and take all the risk and all the chances of a conviction, assuming all the burden upon himself. They declined.

But, after this case was commenced, and in October last, the 1st of October, the defendant goes before the Grand Jury and procures an indictment against Mr. Tilton for libel. From that day until we came in Court here with this case, we have been beseeching them, imploring them, making our appeals to them, making our appeals to the court, to bring on the indictment, but they would not, and there was no alternative left, and we brought our action here, and before you we will bring our evidence, before you we will bring our wrongs, the wrongs that we have suffered, to you we will present our broken home. Before your face we arraign the seducer of our wife. Before you we arraign the man who has brought upon us all this desolation, and from you we expect the justice that has heretofore been denied us. Aye, we know that we shall receive it, because our cause is just, and God is with the right! But, gentlemen, notwithstanding this Committee was appointed by the defendant in this action, it was not the design, it was not the purpose that the facts should be made known to that Committee when it was appointed. As the defendant declared, that was not a step of his own choosing, but he was driven to it by his church. He had to do something, and having to take some step, he had selected the men himself, whom he declared could be managed and controlled; and in his estimation upon that point he was not deceived.

#### DEFENSIVE PLOTTING.

But, again, as I have said before, in this, his hour of extremity, he turns again to his friend, and another device was hit upon but not successfully carried out. After the Bacon letter, Mr. Moulton prepared a statement for Mr. Beecher to make to his congregation, which he promised to make if he said anything, Mr. Moulton advising silence; and in that proposed statement, he acknowledged that he had com-

mitted an offense against Theodore Tilton; but he concludes: "I have committed no crime, and if this Society believes that it is due to it that I should reopen this already too painful subject, or resign, I will resign."

That statement was not made because of the criticism made by an astute lawyer that adultery was not a crime at common law, and therefore that statement did not fully meet the question and cover the ground; and from the time that this Committee was appointed, from the time that the Bacon letter was published, on the 24th of June, 1874, down to the 16th of July following, we find Mr. Beecher in consultation with Mr. Moulton day after day, time after time, writing him letters with reference to the matter. On the 10th of July he writes him a letter wanting to see him. On the same day he writes another letter requesting him to come around to his house to assist him. On the following Monday he writes another letter, and on July the 13th he writes still another.

"My dear Frank: I will be with you at seven, or a little before. I am ashamed to put a straw more upon you, and have but a single consolation, that this matter cannot distress you long, as it must soon end; that is, there will be no more anxiety about the future, whatever regrets there may be about the past."

Still later Mr. Moulton presented to Mr. Beecher a short statement prepared by Mr. Tilton for the Committee to make: he, as anxious then as ever, as anxious as Mr. Beecher himself, to prevent the exposure of this secret, which must bury his family in ruin, and in this proposed statement for the Committee he said:

"The Committee respectfully report that upon examination they find that an offense of grave character was committed by Mr. Beecher against Mr. and Mrs. Tilton."

Mr. Beecher wanted to know if Mr. Tilton would be satisfied with such a report as that made by the Committee. If Mr. Tilton would be satisfied with such a report, he would be satisfied, and, as this states, settle the matter without having the facts made public. Where, then, at this time, was the anxiety to defend the honor and fair name of Elizabeth R. Tilton? It was universally known and believed that that matter and that letter of contrition had reference to her and that her honor and her character were involved in the matter, whatever it was; and, yet notwithstanding two years prior to that this horrible story had been published by the Woodhulls, and no denial and no defense made by Mr. Beecher of this Christian woman, a member of his church, and when after that Mr. West repeats the charges in a formal manner, devices are resorted to to prevent the defense of this woman's fair name and her honor, and at last when the formality of selecting a committee of known and tried friends was gone through with, he is willing by such a statement as that, on acknowledgement that he had been guilty of an offense against Mr. and Mrs. Tilton of a grave character, to let it rest there, and, as he said before, try on his part and the part of the church to live it down. But what in Heaven's name was to become of the woman? No anxiety then to defend the fair name of Elizabeth R. Tilton; and I repeat again, as I did yesterday, that it is too late to play the role of defender of the fair name and honor of Elizabeth R. Tilton by a defense in this action.

But that is not all. When Mr. Beecher was informed that

Mr. Tilton was preparing a statement to make before the Committee presenting the facts—his letter of contrition—what does he do? Again he turns to his friend Moulton for aid and assistance, and, taking counsel together, another device was hit upon. Mr. Beecher, with his own hand, after the appointment of the Committee, after they had commenced the investigation, when he knew that Mr. Tilton was preparing his statement, with his own hand writes a statement for Mr. Tilton to make before that Committee, based upon a prior statement which he, Mr. Beecher, was to make, exonerating Mr. Tilton and doing him justice.

This is Mr. Beecher's proposed statement for Mr. Tilton to make, which I hold. The statement of Mr. Beecher being read, and if striking favorably, then a word sent substantially thus to the Committee:

"I have been three years acting under conviction that I have been wronged, but was under the imputation of being the injurer. I learn from a friend that Mr. B. in his statement to you has reversed this and has done me justice. I am willing, should he consent, to appear before you with him, and dropping the further statements which I felt it to be my duty to make for my own clearance, to settle this painful domestic difficulty, which never ought to have been made public, finally and amicably."

And that is the disposition that the defendant proposes to make of this case! Is that the disposition that the Christian world expected? Is that the disposition that the Christian world had a right to expect would be made of this case? The name of a minister standing so high, his garments soiled, the most infamous charges made against him, of having seduced the wife of his life-long friend, and a member of his church—she also a member of his church—a child who had grown up under his eye; I say, is that the disposition that a Christian world had a right to expect would be made of that matter? Is it possible to explain that consistently with innocence? Would Mr. Beecher, if an innocent man, have, under any circumstances, submitted to such a disposition of the case as that? Had he been an innocent man, and such a disposition as that had been proposed to him, would he not have hurled the proposition back with indignation and said: "What do you mean by thus insulting me? I am charged with adultery with the wife of my friend; my fair name is sullied; my sacred robes are soiled. I have said to the world that I mean to have a full and complete investigation into this abominable charge, and now you come and propose such a covering up, such a burying up of the fact as that. Away with you!" That would have been the action of any honest man, with the eyes of the world, you may say, turned toward this Committee. No question then was engrossing the attention of this land, at least so much as the investigation and the facts that were expected to be elicited by that Committee. The friends of Christianity were hoping for the vindication of Mr. Beecher. Every well-wisher of his country was hoping and praying for the deliverance of the pastor of Plymouth Church. And had he been innocent, he would have thrown open the doors wide to the world, and he would have said, not only to Tilton, but to others who had insinuated or made charges against his moral character,

defying them all, "Bring your proofs; meet me face to face before this Committee." No, no. The very parties who knew the facts, and the very parties who could establish the truth of the charge, were not requested to appear before the Committee.

#### MR. BEECHER'S ACTS INCONSISTENT WITH THE DEFENSE.

Now, gentlemen, I have, thus far, principally called your attention to the case as made out by the defendant himself, adverting to some oral testimony, but principally to the case as made out by the defendant himself, by his own acts, by his own language, by his own letters and writings and statements. And how stands the case now? Is it necessary that I should go still further in the development of this case in order to convince you of the truth of the charge that we bring against him? If it is, I begin to despair of human testimony. We say that in the facts that I have presented to you he has confessed his guilt; leaving out the verbal testimony; leaving out what he has said to other parties, that he has confessed his guilt as clear as it is possible to make it without using the vulgar words, without clothing the confession in vulgar language, it is made as clear as possible to make it in the English tongue. When he said on the 1st of January, 1871, that he had sinned and transgressed with Mrs. Tilton, he confessed his crime really. And when on the 7th of February he said that it was Moulton's hand that had tied up the storm that was about to burst on their heads in that terrible emergency of his life, he confessed his criminal intimacy with Elizabeth R. Tilton. And when he said that he passed sleepless nights and suffered the torments of the damned, that he spent much of his time in the horror of great darkness, and lived on the sharp and ragged edge of anxiety, remorse, fear and despair, he confessed his criminality with Elizabeth R. Tilton. And when, contemplating suicide for the crime that he had committed, he confessed his criminality, for suicide is confession, and the contemplation of suicide is confession. When he wrote to Moulton that Theodore had enjoined upon him not to betray his wife or leave his children to a blight, it was a confession that he had been guilty of a crime with her, the exposure of which would leave his children to a blight, and that was the crime of adultery. I might prolong this recital, but I will not do it, gentlemen. For the past four years he has been confessing his guilt, if English language means any thing.

#### INSTRUCTION TO THE JURY.

But, gentlemen, we do not rest our case upon the testimony furnished by Mr. Beecher himself alone. We go further than that; we will put upon the stand Mr. Carpenter, whose veracity I apprehend will not be questioned in this Court, and to him, we may say, Mr. Beecher made his confession. But, gentlemen, we shall not stop there; you will hear Mr. Beecher's story and you will hear the plaintiff's story. They are both interested in this transaction, and you will take that fact into consideration in weighing their testimony. Certainly no man in this case has so deep an interest as has the defendant. These facts you will take into consideration—they are both in-



interested parties and you will give their evidence such weight as you think it entitled to. And, gentlemen, let me call your attention in this connection to one fact, that when you weigh the testimony of a witness you will look and see the motive there may be for departing from the truth. You see the motive that the defendant has, that this crime be concealed? What motive can you suggest, what motive will my learned friend suggest? None has been suggested up to this time that I am aware of—none has yet been conceived. What motive will they suggest why Theodore Tilton should have made a false charge against Henry Ward Beecher—Theodore Tilton a man of culture, of education, of refined feelings, poetic temperament, a man bold, a man truthful, a man loving his family as but few men love their families—I ask the other side to give a motive, if they can, why Theodore Tilton, thus situated, would make a false charge against his wife of such infamy that would bequeath to his children that he loved, as only a father can love, a heritage of shame and disgrace, and while added to all that he should drag down his own name in infamy by making a false charge against his life-long friend, his revered pastor?

Out with such miserable presumptions! Let fools thus trifle with human intelligence; it does not belong to reasoning men!

#### MOULTON THE GUARDIAN ANGEL IN THE CASE.

No, gentlemen, you have seen in the recital that I have made, that, so far from his wanting to make a false accusation, notwithstanding the great wrong that he had suffered, notwithstanding the wound that he had received in his heart, he so loved his children that he was willing to bear his suffering and conceal the wrong that had been done to him and his family; and you have seen the devices that he resorted to in connection with the defendant and with Mr. Moulton, whose mission it was to keep this secret from the public knowledge. No, gentlemen, I will not detain you any longer upon that point; it would be a waste of time. Mr. Beecher has himself given the lie to any such insinuation, and when on the 1st of January, 1871, he humbled himself before Theodore Tilton as he did before his God, and called upon God to put it into his heart to forgive him, it put forever out of the question that he was fearing a false charge. And when he said:

"I wonder if Elizabeth knows how generously Theodore has borne himself towards me. I wish to God that we three could be made friends again. Theodore, in that case, would have the hardest task."

He put for ever out of consideration the idea that it was a false charge that he was afraid of. And when, on the 2d of April, 1872, two years or two years and a half after this accusation was made against him, he said:

"If I have said anything injurious to the reputation of Theodore Tilton, or have detracted from his standing and fame as a Christian gentleman, I revoke it all. God knows that I have put more thought, and judgment, and earnest desire into my efforts to prepare a way for Theodore and Elizabeth than I ever did for myself a hundredfold."

And when he said to her, "Theodore will hide you in his heart of hearts," he forever set at rest the insinuation that he was afraid of a false accusation. "If my destruction would pre-

pare a way for him that shall not stand in the way;" those who know him best are sure that he is honest, that he is manly, that he is straight-forward, that he is generous. He is a Christian gentleman, large hearted, forbearing, long suffering, honest, manly and straight-forward, and that is the introduction that the defendant gives to the plaintiff when he goes upon the stand to tell his sad story to you of the past five years.

But, gentlemen, we go still further than this. We shall put upon the stand, Mr. Moulton, about whom you have heard so much in all this transaction, this friend whom the defendant said God had sent to preserve him, to tie up the storm that was about to burst upon his head—this man who stood by the defendant for four years with a fidelity, with a constancy unparalleled. No sacrifice on his part was too great to make in order that he might save from shame and from disgrace the innocent parties involved in this crime. You must recollect that after the appointment of the Committee, and the Committee wrote Mr. Moulton a note requesting him to present certain facts before them—you must recollect that the press throughout the land said, "Now we will have the truth; here is a man in whom both parties have confided for four years; here is a man who has stood the mutual friend of both parties; all the facts connected with this transaction he knows; he is the friend of both, having no interest to either; let him speak, and as he speaks so will the truth be declared."

He was looked upon and regarded at that time by the whole country as the arbiter in this matter. Had he spoken then, when the public expected him to speak, and when he ought to have spoken, you would not have been here to-day, we would not have been here to-day, Mr. Beecher would not be the pastor of Plymouth Church to-day. But, with a faithfulness, as I said, unparalleled, notwithstanding he would subject himself to the criticism of the whole land by withholding the statement that he had promised to the country, yet he did withhold that statement at the solicitation of the friends of Mr. Beecher. He yielded to their pleadings, "Give him one more chance; give him one more chance"—and Moulton, as the friend, the loyal friend that he was, stepped in the breach again. He stood there between the public and the truth, damming up the truth from the public. He withheld the statement; he did give him one more chance. And then the astute lawyers, seeing their opportunity, and seeing that in the end the truth must come out, the statement must be made, have the defendant make a statement in which they accused him of blackmailing the defendant. And you recollect that that charge was rung from one end of the country to the other. People's attention was diverted from the facts, the investigation of the case, and they cried out, "Blackmail! Blackmail!" They had performed the office of the cuttle fish; they had thrown this cloud over the minds of the people, and under the cover of that they expected to escape the just criticism that the crime deserved. Well, after this charge had performed its office, it was dropped. Not even this friendly committee, selected for the purpose, had hardihood enough to consider that charge. No; it was not true, and as the defendant declared the following October upon the Twin Mountains, "A million times no—a million times no!" Francis D. Moulton is not a blackmailer.

And even then, after the first statement had been made, with all these facts presented, knowing what still remained, knowing in his own heart and soul that Francis D. Moulton told the truth, and would tell the truth with reference to this matter, he opens, even at that late day, a negotiation in order to take Mr. Moulton out of the case, that all the batteries might be turned upon Theodore Tilton, defenseless and powerless as he was, that he might be crushed and go down with the ruin of his family. For that purpose communication is opened with him, and his agent, Mr. Cleveland, is sent to Boston with full documentary power to act conclusively in his behalf in negotiating with Mr. Moulton. Upon what basis was this negotiation to proceed? With the charge of blackmail resting upon him? No. That falsehood was to be retracted. Mr. Moulton was to be set right before the community, and Mr. Tilton was to be left to fight this battle alone. But it failed. It failed. Oh! the efforts that have been made in this case to suppress the truth and to prevent an honest investigation of the facts! But, thank God! we are now before this tribunal, and we will have the facts, and we will have the truth, and we will have an honest verdict, and we will have an honest condemnation of the crime that has been committed against my client.

Why, gentlemen, do you want any additional evidence that Mr. Moulton was intrusted with the secret relating to Mr. Beecher's moral delinquency? I will give it to you, collated in brief form, a small portion of it, and but a small portion of it. He says—

Mr. Beach—Who?

Mr. Morris—Mr. Beecher. On February 7th, 1871, he says:

"I send you a token, not as a repayment for your great kindness to me, for that can never be repaid, not even by love, which I give you freely. Many, many friends has God raised up to me, but to no one of them has he ever given the opportunity and the wisdom so to serve me as you have. My trust in you is implicit."

Same date:

"The friend whom God has sent to me (Moulton) has proved, above all friends that ever I had, able and willing to relieve me in this terrible emergency of my life. His hand it was that tied up the storm that was ready to burst upon our heads,"

"Sept. 30, 1871.—My heart warms to you, and you might have known that I should be here, if you loved me as much as I do you. I am, my dear Frank, truly and gratefully yours."

"Feb. 5, 1872.—During all this time you are literally all my stay and comfort. I should have fallen on the way but for the courage you inspired, and the hope which you breathed. I am well nigh discouraged. If you, too, cease to trust, to love me, I am alone. I have not another person in the world to whom I could go. With sincere gratitude for your heroic friendship, and with sincere friendship, even if you love me not, I am yours, though unknown."

"Feb. 16, 1873.—Should any incident befall, remember how deeply I feel your fidelity and friendship, your long continued kindness and your affection. I confide everything to your wisdom, as I always have, with such success hitherto, that I fully trust for the future."

"June 1st, 1873.—The pain of life is but a moment; the glory of everlasting emancipation is wordless, inconceivable, full of beckoning glory. Oh! my beloved Frank, I shall know you there and forever hold fellowship with you, and look back and smile at the past!"

"July 7th, 1873.—My dear Frank: The country is beautiful,

the birds as good to me as David's harp. I only need some one to talk to, and that one is you."

"July 14th, 1873.—My dear Frank: For a thousand encouragements, for services that none can appreciate who has not been as sore-hearted as I have been, for your honorable delicacy, for your confidence and affection, I owe you so much that I can neither express nor pay it."

I will not stop to call your attention to all.

"My Dear Frank: I have this morning got back, and want to send my love to you and yours. God bless you, my dear old fellow."

And, referring to him again, he says: "He is worthy of all confidence. He is worthy of all trust."

"December, 1873. This will be handed to you by my friend, Frank D. Moulton, whom I believe to be high minded and honest, and whose statements should be received by all who know him with implicit confidence."

"December 3d, 1873. I believe him to be honest to the core. I would trust him with life and property, without scruple."

"December 30th, 1873. Mr. Frank Moulton I have known for years, and I should as soon believe that I myself had set on foot stealings and cheatings as that he had, or had had the slightest suspicion of it."

"July 16th, 1874. My Dear Frank, I need to see you."

This, gentlemen, is a portion of the testimony of Mr. Beecher with reference to Francis D. Moulton, the man who, on the 31st of December, 1873, saved the defendant to Plymouth Church, made him take back the letter of resignation which he took to Mr. Moulton and delivered to him, retiring from the ministry to private life, because simply he feared the publication of his own letter of contrition.

#### A VIVID PAINTING OF THE CRIME CHARGED.

Oh, well might he stand aghast at the exposure of such a crime as he had committed! I will not attempt to portray to you the heinousness of that crime, but I will read an extract or two from an author much more capable of judging, and who can draw the picture much more vividly than I can draw it:

"The seducer! Playing upon the most sacred passions, he betrays innocence. How? By its tenderest faculties, by its trust, by its unsuspecting faith, by its honor. The victim often and often is not the accomplice so much as the sufferer, betrayed by an exorcism which bewitched her noblest affections, and became the suicide of her virtue. The betrayer, for the most intense selfishness, without one noble motive, without one pretense of honor—by lies, by a devilish jugglery of fraud, by blinding the eye, confusing the conscience, misleading the judgment, and instilling the dew of sorcery upon every flower of sweet affection—deliberately, heartlessly damns the confiding victim! Is there one shade of good intention, one glimmering trace of light? Not one. There was not the most shadowy, tremulous intention of honor. It was sheer, premeditated, wholesale ruin from beginning to end. The accursed sorcerer opens the door of the world to push her forth. She looks out all shuddering; for there is shame and sharp-toothed hatred, and chattering slander, and malignant envy, and triumphant jealousy, and murderous revenge—these are seen rising before her; clouds full of fire, that burn but will not kill! And there is for her want, poverty and gaunt famine. There is the world spread out. She sees father and mother heartlessly abandoning her; a brother's shame, a sister's anguish. It is a vision of desolation, a plundered home, an altar where honor and purity and virtue and peace have been insidiously sacrificed to the foul Moloch. All is cheerlessness to the eye, and her ear catches



the sound of sighing and mourning, wails and laments; and far down, at the horizon of the vision, the murky cloud for a moment lifts, and she sees the very bottom of infamy, the ghastliness of death, the last spasm of horrible departure, the awful thunder of final doom. All this the trembling, betrayed creature sees through the open door of the future, and with a voice that might move the dead, she turns and clasps his knees in awful agony. "Leave me not! Oh! spare me—save me—cast me not away!" Poor thing—she is dealing with a demon! Spare her? save her? The polished scoundrel betrayed her to abandon her, and walks the street to boast his hellish deed. It becomes him as a reputation. Surely society will crush him! They will smite the wolf and seek out the bleeding lamb. Oh! my soul, believe it not! What right is that? The drooping victim is worse used than the infernal destroyer! He is fondled, courted, passes from honor to honor, and she is crushed and mangled under the infuriate tramp of public indignation. On her mangled corpse they stand to put the laurels on the murderer's brow! When I see such things as these, I thank God there is a judgment, and that there is a hell."

Twenty years ago, gentlemen, that was the utterance of the defendant in this case; and, oh! how true, how true the judgment is, what a strange, what a striking coincidence! On the 1st of January, 1871, he says of his victim: "She is guiltless, sinned against, bearing the transgressions of another." "The victim often and often is not the accomplice so much as the sufferer." When we see that language in the letter of contrition that she is guiltless, proved that she could not have been guilty of adultery, we turn to the utterance of the defendant himself, which will stand as his condemnation upon that point. And, oh! how true, and how true have been all the prophecies of this prophetic statement, how they have been fulfilled, how the door of the cold world was opened, and how it was said that this poor woman has been so weak, so wholly subject to the strongest outside influence at the moment, that the general public can give but little weight to her testimony either for or against Mr. Beecher. And, again, that her conduct cannot be defended upon any principle of human accountability. She is the sufferer, she is the sufferer, while the seducer is here portrayed as fondled, as courted, as passing from one honor to another, and she is crushed.

"If to be the thrall of love  
And faith, too generous to defend  
Itself from him she loved, be sin,  
What hope of grace may the seducer win?"

#### AN ELOQUENT APPEAL TO THE JURY.

Gentlemen of the jury, I feel that I have detained you already too long; I certainly have detained you too long for my own strength and my own health; but I felt it my duty to present to you the considerations that I have presented to you, and if I have exhibited any warmth in the presenting of them to you, you will pardon me, I am sure, because I come to you with a heart full of grief and full of sympathy for the suffering and the wrong that my client has endured. I thank you, gentlemen, for the strict attention that you have paid to the imperfect presentation I have made of this case. I regret, for the interests of my client, that this duty had not devolved upon one of my abler associates; yet I have the satisfaction of know-

ing that I have brought to the task a conscientious devotion to the interests of my client, that nothing but a firm conviction of the justness of his case could have inspired. Oh! gentlemen, what a scene is this, what a spectacle we behold here to-day! On the one side you see a man of vast prosperity, surrounded by powerful friends, with unlimited resources. On the other side you see a man powerless and poor, coming to you from a desolate home. Already he has been made the victim of a foul charge, then the victim of a foul slander, and then again the victim of a foul persecution, unparalleled for power and relentlessness. And what has he done? Why, he was the chance possessor of a loving and beloved wife, of a happy and of an innocent home, which his bosom-friend, his life-long bosom friend, his pastor, his spiritual adviser, taking advantage of that friendship, taking advantage of his absence and taking advantage of his sacred calling, has dispossessed and despoiled him of. That home is desolated, the hopes of that family blasted, the pillars of that household have been pulled down upon the idols of his worship, and nought but desolation reigns there! Oh, gentlemen, you who have children, you who know what it is to return from your daily labors to the bosom of your happy family, can appreciate the wrong and the suffering that my unhappy client has endured; but it is to you, as fathers, and as brothers, and as husbands, that we come with our case, and as you love your homes, as you love your families and your children, as you regard the sacredness of your homes and as you reverence virtue and respect the sanctity of the family altar, I call upon you in the name of all that has been violated, I call upon you in the name of Christianity by the teachings of the Saviour upon the Mount, by the law thundered from Mount Sinai, by every consideration that is near and dear to us on earth, I call upon you to brand the seducer as his crime deserves to be branded.

Let it be written on every door throughout the land: "Death, destruction to the seducer;" and when you have rendered that verdict you will receive the prayers and the blessings of every virtuous mother and of every virtuous daughter in the land, and a peaceful conscience will follow you through life, will be with you in the last solemn scenes of earth, and console you when at last you stand with your life record before the ever-living God. [Applause.]

This closed Mr. Morris's address—the delivery of which took two and a half days—the last words being spoken at 12:20 o'clock.

Mr. Fullerton—May it please your Honor, it will subserve the convenience, I think, of all parties connected with this controversy if your Honor will now take a recess until 2 o'clock. We will, meanwhile, prepare our evidence, and then commence to give it.

Judge Neilson—Whatever time you say.

Mr. Evarts—I rose, if your Honor please, with a view of suggesting that, as the business of the trial is now to commence, an arrangement of the tables should be made that would seem to us more suitable for the convenience of the counsel on both sides of the case, and the recess will now give an opportunity to have that arrangement made if we agree upon it.

Judge Neilson—I will leave the arrangement of the tables to yourselves, gentlemen. [To the Jury.] Gentlemen, we will now take a recess until two o'clock.

### THE TAKING OF TESTIMONY BEGUN.

At 1:30 o'clock the Court re-assembled pursuant to adjournment.

Mr. Morris—If your Honor please, we will have to make some different arrangements here as to tables. I think that one table fixed, for instance, as it was when we were getting the jury, will be more convenient. Your Honor will see that, with four or five counsel here in this space of about six feet by three, with their clients, it is utterly impossible to proceed with this case. We can't do it; it is simply an impossibility, that is all.

Judge Neilson—I made no order about that. I left it to counsel to arrange, hoping that they would do so and suit themselves mutually on both sides.

Mr. Morris—Judge Porter makes a suggestion which I think would relieve the difficulty.

Mr. Porter—I see that it is utterly unfair to my friends to be compressed within this little circle. We ought to have some arrangement by which we can be within earshot of the witnesses, and by which they can have their friends around them. It seems to me that the suggestion of Judge Morris is the best, just to change that table and put it here. We all want to see and hear. It is very desirable to us that we shall hear your Honor and hear the witnesses.

Judge Neilson—Will you gentlemen arrange that?

Mr. Evarts—If your Honor please, the difficulty is made by the fact that there is not space enough given to the plaintiff's counsel, not at the table, because they have space enough, and not in sufficient proximity to the jury and the witnesses, for they surpass us in that respect in every degree. Their farthest man is nearer than the nearest of ours. It is that they have not space enough about them. I agree that that is the difficulty. That difficulty is made by the presence of the reporters' table, which does not happen to be here and is *there*. If it were here, we should be cramped just as much as they are. Now, your Honor sees that this plan of giving a line at right angles to two sides to each set of counsel gives more opportunity within convenient space than any other arrangement can do, but it brings us out here into the room, and we need therefore to compress a little the arrangements of the reporters. That is all. I have no tenacity about the arrangements. What we want is the space.

Judge Neilson—I have no doubt the gentlemen will agree among themselves how to arrange it. They can appreciate that better than I can. Mr. Beach, how do you think it would do if that table were turned, leaving a space between the two tables.

Mr. Beach—Well, Sir, I never have been so conveniently situated as when we had the two tables, one for each counsel.

Mr. Evarts—The difficulty there was that the table for the plaintiff was very satisfactory, but the intervention of two rows of counsel, and then our table removed beyond that, threw us quite in the rear.

Judge Neilson—What do you think, Sir, if the table is turned the other way and a space left between the two?

Mr. Beach—That is quite immaterial to me.

Judge Neilson—I think that is Judge Porter's idea, Sir.

Mr. Evarts—I think Judge Porter's idea was to take this table and put it lengthwise.

Mr. Beach—That brings my back, when I write, to the jury.

Judge Neilson—Supposing that were turned the end this way; you have two or three feet then between the two tables.

Mr. Morris—I would make this suggestion. There are some tables in the other room—narrower tables than these—and I think if two were brought in and one set up close here for one side and the other as near as they are now anyway, and take these two cumbersome tables away—

Judge Neilson—You might do that this afternoon, but we could not do it at this moment.

Mr. Morris—But it is an impossibility. Here we are in a space about four feet by six.

Judge Neilson—That must be remedied. I don't know how to do it now.

Mr. Morris—Could not this gentleman [referring to a reporter] take a seat somewhere else so as to have a little space there? We are willing to do everything for the reporters that we can, but we must have some room.

Judge Neilson—[To the Reporter] See if there is a place where your table can be moved to. If your table were over towards the wall there, you would be quite in hearing, would you not? I think if we should build a gallery perhaps it would be better.

After a few minutes spent in arranging the seats of counsel and reporters, Judge Neilson said:

Judge Neilson—The audience will please come to order.

The clerk called the list of jurors, and all answered to their names.

Mr. Fullerton—Shall I proceed, Sir?

Judge Neilson—Yea, Sir.

Mr. Fullerton—Augustus Maverick.

### TESTIMONY OF AUGUSTUS MAVERICK.

Augustus Maverick, called and sworn on behalf of plaintiff:

Q. By Mr. Fullerton—Mr. Maverick, where do you reside?

A. In this city, Sir.

Q. Have you been a resident of Brooklyn long? A. About 15 years, with an intermission of a year, I think.

Q. Are you acquainted with Theodore Tilton? A. I am, Sir.

Q. How long have you been acquainted with him? A. Upwards of 30 years.

Q. Were you present at his marriage? A. I was, Sir.

Q. When did it take place? A. On the 2d of October, 1858.

Q. Where? A. At Mr. Beecher's house.

Q. And who performed the ceremony? A. Mr. Beecher.

Q. The defendant in this case? A. Yes, Sir.

Mr. Evarts—All that is admitted by the pleadings.

Mr. Fullerton—There are some things that I desire to prove that are not admitted there.

[To the witness]—Have you been intimate with his family since his marriage? A. Not for the past six or seven years, not



to say intimate. I have been in the habit of going to the house occasionally, but for the last five or six years only very occasionally.

Q. After his marriage were you intimate with him and his family? A. Yes, Sir, for a number of years?

Q. Do you know how many children there were or are of that marriage? A. I don't know the present number, Sir.

Q. Do you know they have children? A. Yes, Sir.

Q. Where did Mr. Tilton reside first after his marriage when he commenced keeping house? A. I cannot say where he first resided on going to keeping house, but the first that I visited him after he began to keep house to my knowledge was at his present residence—that is, 174 Livingston-st. That is the first of my actual knowledge of his housekeeping.

Q. You did not visit him at any other place where he kept house? A. Not while they were housekeeping; no, sir.

Q. How frequently did you visit him after his marriage? A. Very seldom; I made an occasional visit; I cannot say that I was upon visiting terms, that is, to be in the habit of frequent and intimate visits; it is not my custom with any one, and he was in the same position.

Q. State, if you please, who he married? A. Elizabeth Richards.

Q. Was she a resident of Brooklyn? A. Yes, sir.

Mr. Fullerton—That is all.

Mr. Shearman—Wait a moment, if your Honor please.

Mr. Evarts [after consulting with his associates]—We have nothing to ask.

Mr. Fullerton—That is all, Mr. Maverick. Francis D. Moulton.

Mr. Morris—He has gone after some papers, and is not present.

Mr. Fullerton—Mr. Moulton forgot to bring some papers with him, Sir, that he was directed to bring, and returned to his house for them. I suppose he will be here very shortly.

Judge Neilson—Very well, Sir.

After a delay of about 15 minutes, Mr. Moulton appeared in Court, and took the stand.

#### TESTIMONY OF FRANCIS D. MOULTON.

Frank D. Moulton, called and sworn on behalf of plaintiff:

Q. By Mr. Fullerton—Mr. Moulton, where do you reside? A. 40 Remsen-st.

Q. In the City of Brooklyn? A. In the City of Brooklyn.

Q. How long have you been a resident of the City of Brooklyn? A. About ten years, Sir, I think; perhaps longer.

Q. Before you became a resident of the City of Brooklyn, where did you reside? A. In New-York, Sir—Forty-ninth-st.

Q. And how long did you reside there? A. Well, Sir, in that neighborhood ever since I had been born.

Q. Were you born in the City of New-York? A. I was born in the City of New-York.

Q. Are you engaged in business in Brooklyn? A. I am engaged in business in Brooklyn and in New-York.

Q. And a member of what firm? A. A member of the firm of Woodruff & Robinson.

Q. How long have you been a member of that firm? A. A member of the firm, Sir, since 1864.

Q. Connected with it before that? A. Yes, Sir, since 1854.

Q. In what capacity prior to your becoming a partner? A. As clerk, Sir, for six years, and then I had an interest in the business, and then a copartner, dating 1854.

Q. Are you a married man? A. I am.

Q. When were you married? A. I was married in 1861, I believe, Sir.

Q. And what is your wife's name? A. Emma Moulton.

Q. Are you acquainted with Theodore Tilton? A. I am.

Q. When did you become acquainted with him? A. In 1849 or 1850.

Q. Where was he then residing? A. I don't know where he was residing. He was a student at the Free Academy when I first became acquainted with him.

Q. In New-York? A. In New-York; yes, Sir.

Q. Were you a schoolmate of his? A. I was.

Q. State whether you have been on intimate terms with him from that time to the present? A. Yes, Sir; with an intermission, perhaps, of a few years of intimacy, not of estrangement, though we lived apart. I lived in New-York and he lived in Brooklyn.

Q. And are you acquainted with his family? A. Yes, Sir.

Q. How many children has he? A. Four or five.

Q. Will you give us their names? A. Florence.

Q. How old is she? A. I believe she is sixteen years of age.

Q. Is she the oldest? A. She is the oldest.

Q. The next, please. A. Carroll, a boy.

Q. How old is he? A. About, I guess, eleven years old. And Alice.

Q. Her age, please, as near as you can recollect. A. I think Carroll is younger than Alice; Alice, I guess, is about thirteen years of age, thirteen or fourteen.

Q. There is still another, I believe? A. Yes; I don't know the name of that child, Sir; it was called Frank at one time; I understand that the name of the child has been changed since then.

By Mr. Evarts—You knew it as Frank? A. I knew it as Ralph and Frank; it was Ralph at first, and then it was changed to Frank, as an expression of the sense of its mother of my fidelity to her and its interests.

Mr. Evarts—That is immaterial. A. Certainly; I knew the child as well by the name of Frank.

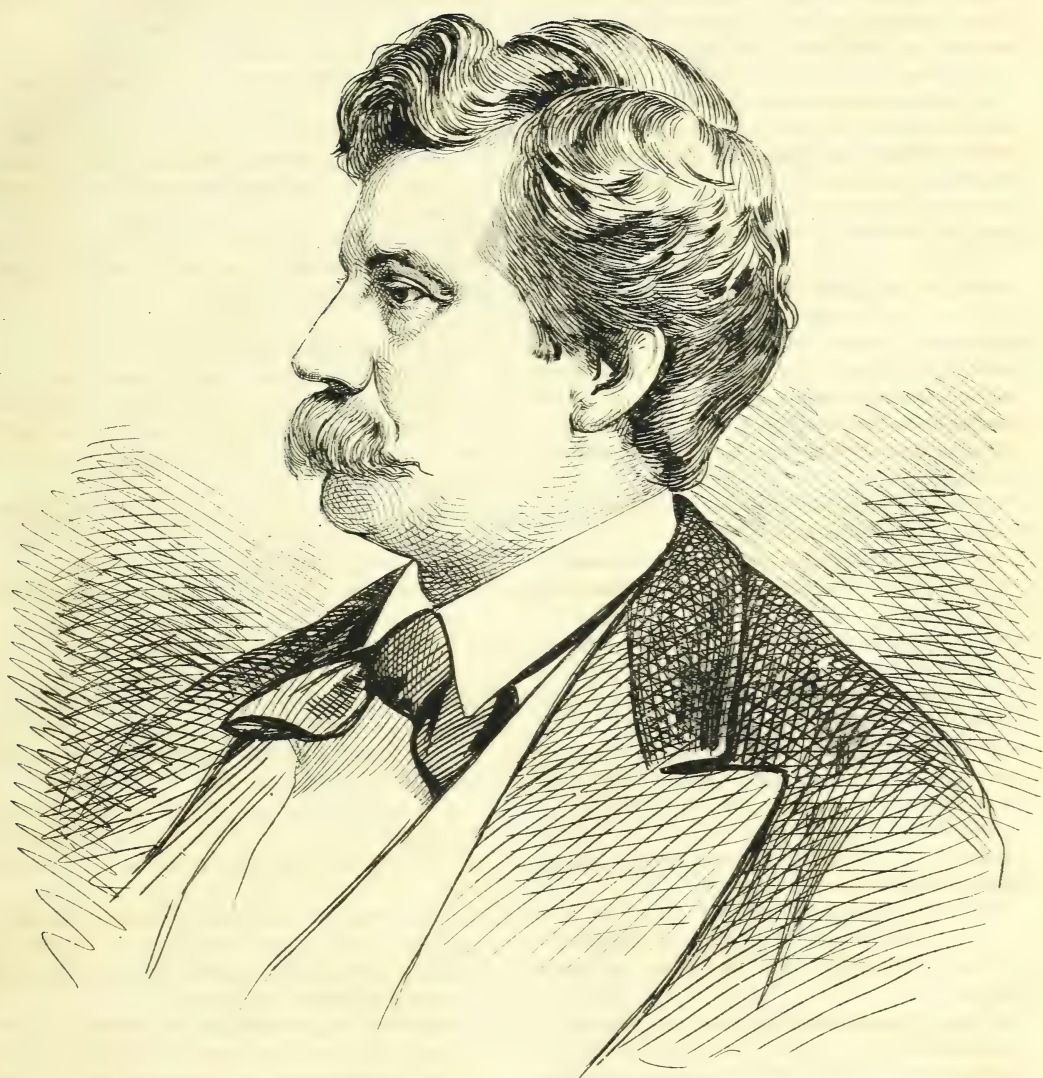
By Mr. Fullerton—Have they lost any children? A. I believe one, Sir.

Q. Do you recollect when that occurred? A. I do not remember precisely the date, Sir; somewhere in 1869, I think, or 1868.

Q. The youngest child that you have spoken of, Ralph or Frank, what is its age, as near as you can tell? A. Five or six years of age; six years I should say; five years of age.

Q. Have you been upon terms of intimacy with the family of Mr. Tilton? A. I have; yes.

Q. What was the relation existing between Theodore Tilton and his wife up to the year 1870, so far as affection is concerned? A. Well, Sir, I never knew of any difference in the family up to that time.



Francis D. Moulton





Mr. Evarts—Up to when?

Mr. Fullerton—Up to 1870.

Q. You knew of no estrangements? A. None, Sir; no.

Q. Do you know Henry Ward Beecher? A. I do.

Q. How long have you been acquainted with him? A. Intimately, Sir, since the 30th of December, 1870.

Q. And before that did you know him? A. Not very well; no, Sir.

Q. Did you have a speaking acquaintance with him before that? A. Yes, Sir.

Q. For how long a time? A. I think that the first time I met him to speak to him was in 1868, in his church.

Q. Under what circumstances? A. In his church; I was in church with Mr. Tilton and his wife. Mr. Tilton and myself had just returned from an excursion into the country, and Mr. Beecher came to the pew to greet us. That, I think, was the first time.

Q. After that, and up to 1870, when your intimate acquaintance commenced, were you on speaking terms with him? Had you met him in the mean time? A. I met him at Page's studio.

Q. Under what circumstances? A. He was having his portrait painted and I was having mine; I met him casually.

Q. How frequently did you meet him there? A. I met him not to exceed three or four times.

Q. Where did Mr. Beecher reside? A. Mr. Evarts is speaking to you, Sir.

Q. You may state the time when you met him at Page's, if you please? A. I think it was in 1869; I think that is the year.

Q. Do you know where Mr. Beecher resided at that time? A. I understand that he resided in Brooklyn.

Q. I want to call your attention to the month of December, 1870. Did you meet Mr. Beecher during the latter part of that month, the latter part of the month of December, 1870? A. Yea, Sir.

Q. Where? A. At his house.

Q. Did you have any conversation with him? A. Yes, Sir.

Q. State, if you please, what that conversation was? A. I said to him—; I met him in his parlor—

Q. Do you recollect the day of the month? A. Yes, Sir; December the 30th.

Q. Now, you may narrate the conversation between you? A. Any of the incidents preceding it, to tell how I met him?

Q. No, Sir; just narrate the conversation first, and then I will ask you what induced the conversation.

Mr. Evarts—Mr. Moulton, will you be so good as to give it in the person of the speaker, what you said, and what he said, so far as you can? A. Thank you, I will.

Mr. Beach—No, Sir; that is not so unless you undertake to repeat his precise language. You may give the substance of it if you do not recollect the precise words. A. Yes, Sir; I said to Mr. Beecher in his parlor, "Mr. Beecher, Mr. Theodore Tilton is at my house and wishes to see you."

By Mr. Fullerton—Now, let us have it fairly understood. Do you give the substance now as nearly as you recollect it, or he words? A. I am giving it as nearly to the words as I can remember it. I certainly am giving the substance.

Q. And do not profess to give the exact words? A. No, Sir.

Q. Very well. Now go on with the narration. A. I said, "Theodore Tilton is at my house and wishes to see you to-night."

Judge Neilson—Mr. Fullerton, I am the bearer of a request that you speak a little louder. It is here in writing, Sir.

Mr. Fullerton—Well, Sir, I will conform to that request.

Mr. Morris—He has hardly room here to speak at all.

Q. Go on with the narrative, Mr. Moulton. A. He said, "This is Friday night; this is prayer-meeting night; I cannot go to see him." "Well," I said, "he wants to see you with regard to your relations with his family, and with regard to the letter that he has sent to you through Mr. Bowen. I think you better go to see him." I said: "You better send somebody down to your prayer-meeting for you," and he did.

Q. State what occurred in reference to that? A. He called to somebody in the room adjoining and told them; he sent some message to his prayer-meeting; I don't remember what it was, but he went out of the house with me, at my request.

Q. And where did you go? A. Went down to my house, Sir, where Mr. Tilton was.

Q. Where did he go after he entered your house? A. He went into the front chamber up stairs where Mr. Tilton was.

Q. And where did you go? A. I remained in the parlor.

Q. Now, Mr. Moulton, state whether that request of yours of Mr. Beecher to go to your house was in consequence of anything that had occurred between yourself and Mr. Tilton prior to your going there?

Mr. Evarts—If your Honor please.

Judge Neilson, to the witness—Say yes or no, Sir.

A. Yes.

Q. Was any conversation had between you on your way from Mr. Beecher's house to your own? A. Yes, Sir.

Q. State what that conversation was as near as you can? A. As we were going down the steps Mr. Beecher says, "What can I do? What can I do?" And I said, "I don't know. I am not a Christian; I am a heathen; but I will try to show you how well a heathen can serve you; I will try to do you some good; I will try to help you;" and we walked along together, and I told him what Mr. Bowen had said to Mr. Tilton concerning his adulteries; I told him that Mr. Bowen had charged him with adulteries in the presence of Mr. Tilton and Oliver Johnson, and—

Q. What reply? Go on with the narration. A. Yes, I will; and he said that was singular; when Bowen brought to him that letter he pledged his friendship to him; he did not inform him that he had told Tilton any such thing; and he told me furthermore that he had sympathized with Bowen in the stories told him against Tilton; that Bowen told him some stories against Tilton, and that he had sympathized with them; another remark that he made was, "This is a terrible night; there is an appropriateness in this storm;" we reached the house.

Q. You spoke of a letter which Mr. Tilton had written to him through Mr. Bowen? A. Yea, Sir.

Q. Did you ever see that letter. A. Did I ever see it?



Q. Yes, Sir. A. Yes, Sir; I have seen it; I had not seen it at that time—the original letter that was delivered.

Q. Did you ever have it in your possession? A. Yes, Sir.

Q. Have you it in your possession now? A. Yes.

Q. Just select it for me, please [handing witness a bundle of papers]. A. I don't know that I can. If you will hand me my overcoat I think I have got the document there that will enable me to do it. [Mr. Fullerton hands him his overcoat.] Have you any book with my statement in it?

Q. I can omit it if you cannot find it directly.

Mr. Beach—I can give you a book, if you want a book.

The Witness—Yes; if you will let me have one of those books I think I can find it.

Mr. Fullerton—I want the original.

The Witness—I know you do. I want to find it by the mark. They are all marked.

Mr. Beach—Do you want a book?

The Witness—Yes; I would like to have one, Sir, if it is convenient.

The witness referred to a newspaper.

Mr. Fullerton—[Handing the witness a book.] That is what you wished to see?

The Witness—Yes.

Mr. Beach—At 2.15 it begins.

Mr. Fullerton—The book is not paged.

Mr. Beach—I have paged it.

Mr. Evarts—You have used that copy, I suppose?

Mr. Beach—Yes; I think it is correctly paged.

The Witness—[Examining the book.] I do not see it referred to here; I cannot tell the number; they are all marked in the exhibits.

Mr. Morris—It is marked "A," I think.

The Witness—Is it in either of those? Just see [handing Mr. Fullerton two packages of papers].

Mr. Fullerton—I will see.

The Witness—Just see if it is in your list of papers.

Mr. Morris took the packages to make a search for the paper referred to, and Mr. Fullerton continued the examination.

Q. How long was Mr. Beecher up in this front room of which you have spoken, with Mr. Tilton, on that occasion? A. Well, I should judge, about an hour, Sir.

Q. Was there any other person present that you know of? A. With him and Mr. Tilton?

Q. Yes, Sir? A. No one that I know of, Sir.

Q. And during that interview where were you? A. Down in the parlor.

Q. Was any one with you? A. No, Sir.

Q. Did you remain in the parlor until Mr. Beecher came from the front room? A. Yes, Sir.

Judge Neilson—The upper room?

Mr. Fullerton—The upper room—the upper front room. [To the witness.] And where did he go when he left the upper front room? A. I went out with him to Theodore Tilton's house, Sir.

Q. Where did you meet him after he first left the room? A. I met him at the foot of the stairs.

Q. In the hall? A. In the hall, yes, Sir.

Q. Did anything pass between you? A. Yes, Sir.

Q. State what he said? A. He asked me if I had seen the letter of confession of Elizabeth, and I told him I had, and he said, "This will kill me."

Q. Anything else said before you left the house? A. No; we walked out together.

Q. And where did you go in company with him, if anywhere? A. Went down to Theodore Tilton's house, Sir.

Q. What did you say on the way there after you left the house? A. He said to me, "This comes upon me as if struck by lightning," and I talked with him again about what Bowen had said.

Q. Repeat it? A. I told him again—I told him that I thought it very strange that Mr. Bowen should have made such charges against him to Mr. Tilton and not have told him anything about it. I said I thought it was very treacherous on Bowen's part toward Tilton. I told him that Bowen had promised to sustain the charges that he had made, and that is the substance of what was said. Neither of us, I think, were disposed to talk much, Sir.

Mr. Evarts to the witness—All observations of that kind—

The Witness—I beg pardon, Sir; I stand corrected.

Q. Have you related all that was said that you now remember before you left Mr. Tilton's house? A. Yes.

Q. Let me ask you, was anything said as to the substance of the interview between Mr. Beecher and Mr. Tilton, when you were not present? A. Why, he told me that Mr. Tilton had told him of the confession of his wife to him.

Q. Just repeat now what he said upon that subject. A. Mr. Beecher told me that Mr. Tilton had told him that Elizabeth had confessed, and had read to him what either was a confession or a copy of a confession of Elizabeth of sexual intercourse between them; and he told me that Theodore had told him of the reasons for sending to him the letter through Mr. Bowen. That is all that I remember just now.

Q. When you went to see Mr. Beecher that night, had you any paper in your possession that had been given to you by Mr. Tilton? A. By Mr. Tilton? Yes, a letter from Mrs. Tilton.

Q. Did you give it to Mr. Beecher? A. No, Sir.

Q. Did you show it to him? A. No, Sir; I didn't.

Q. Do you know whether Mr. Tilton kept a copy of that paper of which you now speak, which he gave to you? A. He made a copy of it, I think; he made a copy of it.

Q. Where did he make it? A. He made it at my house.

Q. At the time that he gave the original to you? A. Yes, Sir; he took a copy of it.

Q. And what did you do with that paper which you took from him, and of which he made a copy? A. I kept it until after the "tripartite covenant," and returned it to Mr. Tilton.

Q. And when you arrived at Mr. Tilton's house did you go in? A. No, Sir; I did not go in.

Q. Did Mr. Beecher go in? A. He did; yes, Sir.

Q. And where did you then go? A. I went home.

Q. Did he tell you of his object in going there? A. He told me that Theodore had given him permission to go to Elizabeth for confirmation of the story—nothing further than that.

Q. After leaving him there, where did you go? A. After leaving him at Mr. Tilton's?

Q. Yes, Sir? A. I said that I went to my house.

Q. You went back to your house? A. Yes, Sir.

Q. Did you see Mr. Beecher again that night? A. I did; yes, Sir.

Q. How long after you left him at Mr. Tilton's house? A. Within an hour, I should think.

Q. And where did you see him? A. In my parlor.

Q. He returned to your house, did he? A. Yes, Sir, he did.

Q. Tell me what occurred then between you? A. I went into the parlor with him, and I said to him: "Well, have you seen Elizabeth?" and he said he had. That was all he said.

Q. No further conversation? A. No.

Q. How long did he remain therewith you? A. Long enough to say that, and go to the front door, and go out again; I don't know; a very short time, Sir.

Q. And where did you go with him then? A. I went with him to his house.

Q. Did you go in? A. No, Sir.

Q. What conversation, if any, did you have on the way to his house? A. Well, it was nothing but a repetition of the other conversation about Bowen, and he asked me to be friendly to him. I said I would be.

Q. Do you recollect his words when he asked you to be friendly with him? As near as you can repeat them I wish you would do so. A. He said he wanted me to be a friend to him in this terrible business.

Q. And did you part with him at his own house? A. Yes, Sir.

Q. When did you next see him? A. On the evening of December 31.

Q. That was the next day? A. Yes, Sir.

Q. After these interviews of which you have spoken? A. Yes, Sir.

Q. Now, Mr. Moulton, up to that period did Mr. Beecher say anything upon the subject of having given any advice in reference to any domestic difficulty between Tilton and his wife, or in reference to any dismissal from an editorship, or any other relation to a newspaper? A. No, Sir; no.

Q. He said nothing upon either of those subjects up to that time? A. No, Sir.

Q. Now we come to the 31st, and where did you first see him then? A. At his house.

Q. How did it happen that you went to his house? A. Well, I received a note from Theodore Tilton on the morning of the 31st of December, asking me to return to him the confession of Elizabeth which I had.

Mr. Evarts—Well, we don't want the contents of the paper.

By Mr. Fullerton—No, I only want to know how it happened that you went to Mr. Beecher's house on the morning of the 31st? A. On the 31st, not on the morning of the 31st.

Q. Well, on the 31st? A. I went there because I had been informed by Mr. Tilton—

Mr. Evarts—No matter what you had been informed.

Judge Neilson—You went there in consequence of information.

By Mr. Fullerton—Did you go there in consequence of something that occurred between you and Mr. Tilton? A. Yes, Sir.

Q. What occurred whilst you were there? A. I saw Mr. Beecher, and I said to him: "I think that before we terminate this interview, your judgment will be that it is a very strange one." And I said to him: "Do you remember that I asked you last night if anybody had seen the letter that Mr. Tilton sent to you through Mr. Bowen, and your answer was that nobody saved myself had seen it;" and he remembered that. I said: "Mr. Beecher, I want to read to you a letter from Elizabeth Tilton, asking for the return of the paper which I have and the paper which she gave to you last night at your dictation," and I did read that paper to him, and I said to him, "I will read to you also another letter, in which Mrs. Tilton has informed her husband—"

Mr. Evarts—No, no; if he read the letter—

Mr. Fullerton—He is telling what he said to Mr. Beecher.

Mr. Evarts—No.

Mr. Fullerton—Yes, Sir; I beg your pardon! He is stating just what he said to Mr. Beecher. He said: "I will read to you another letter."

The witness resuming—Yes, Sir. "I will read to you a letter in which Mrs. Tilton informs her husband that she has given you a letter of retraction," and I read that also to him.

Q. You read that also to him? A. Yes, Sir.

Q. What did he reply to that? A. He said he was surprised. I said to him "Mr. Beecher, I think you have been guilty of a great meanness in getting the permission of a husband to visit his house and then going there to his wife and procuring from her what you know to be a lie. Now, I said to Mr. Beecher, "that won't save you." I said to him; "I did not see this morning much of the guidance of God in what you did, but perhaps it will all turn out for the best, for I hold the confession of Elizabeth Tilton, and if you will return that retraction to me I will burn both in your presence, or I will preserve both," and he said to me: "In case of my death this would be the only defense that my family would have against such a charge," And I said to him: "Mr. Beecher, I do not think that now you ought to take merely selfish counsel of yourself. The truth is the truth; you have got to abide by that. Where is the retraction." I said to him, "I want it." He went to the closet and got the retraction, the paper that he got from Elizabeth Tilton the night before, as he said, and handed it to me. I told him I would protect the confession—I would not give that up to Tilton—and I would protect this paper that he gave me with my life; and sitting there, Sir, I felt my pistol in my pocket, and I said: "To this extent, with my life." [Placing his hand upon his pocket].

By Mr. Evarts—You mean you took it out? A. Yes, Sir; I took it out; I felt it in my coat pocket, and I put it on my knee.

By Mr. Fullerton—Go on with the narrative. A. He said, "Of course, if this charge is made against me, if Theodore should make any charge against me, my defense would be the technical one of general denial; but with you, since you know the truth, I would throw myself upon your friendship, and what I believe to be your desire to save me." And he told me there.



he said to me, in addition, that he considered his sexual intercourse with Mrs. Tilton was natural—an expression of his love for her, as the words he used; and he said he felt justified in it on account of the love he held for her and which he knew she held for him; and said, at the close of the conversation, “my life is ended. When to me there should now come honor and rest, I find myself upon the brink of a moral Niagara, with no power to save myself, and I call upon you to save me.”

Q. State, if you please, what degree of emotion he manifested, if any? A. A very great degree of emotion.

Q. How did it manifest itself? A. In excited conversation.

Q. In any other way? A. Not that I know of.

Q. I did not know but that he wept upon that occasion.

Mr. Evarts—Well —

The Witness—Well, yes, he did weep.

Q. Look at the paper which I show you, and say whether it is one of the three of which you have spoken in your testimony. [Handing witness a letter.] A. Yes, sir, that is one of them.

Q. In whose handwriting is that letter? A. Elizabeth Tilton's.

Mr. Fullerton—I propose to read it in evidence (reading):

“Saturday Morning.

“MY DEAR FRIEND FRANK:

“I want you to do me the greatest possible favor. My letter which you have and the one I gave Mr. Beecher, at his dictation, last evening, ought both to be destroyed. Please bring both to me, and I will burn them. Show this note to Theodore and Mr. Beecher; they will see the propriety of this request. Yours truly,

“E. R. TILTON.”

[Letter marked Exhibit No. 1.]

Mr. Evarts, to Mr. Fullerton—Did he say how he received it?

Q. By Mr. Fullerton—How did you receive that note from her? A. I think from Elizabeth Tilton direct.

Q. From whom? A. From Elizabeth Tilton directly.

By Mr. Evarts—Not personally, do you mean? A. Yes, Sir.

Q. At her house? A. Yes, Sir.

Q. That is your recollection of it? A. Yes, Sir.

Q. Received it at her house from her? A. Yes, Sir.

By Mr. Fullerton—What else occurred during this interview at Mr. Beecher's house on the 31st? A. What is the question?

Q. What else occurred, if anything, at Mr. Beecher's house on the morning of the 31st? A. There was not anything occurred on the morning of the 31st; it was in the evening.

Q. Well, what occurred on the 31st? A. Nothing that I remember, further than that.

Q. Did you go away and leave him at his house? A. I did; yes, Sir.

Q. And where did you go? A. Went home to my house.

Q. Did you take with you the letter which Mr. Beecher gave you, called the retraction? A. Yes, Sir.

Q. And what did you do with it? A. Read it to Theodore Tilton, whom I found there.

Q. And after that what did you do with it? A. Kept it.

Q. When did you next see Mr. Beecher after that interview? A. I think it was January the 1st, Sir—the evening of January the 1st. I don't remember seeing him before that—the afternoon or evening of January the 1st.

Q. Where did you see him? A. At his house.

Q. How did it happen that you went there on January the 1st? A. By his invitation.

Q. And when was that invitation extended to you? A. December the 31st.

Q. When you were there on the occasion you have already spoken of? A. Yes, Sir.

Q. He invited you to come the following day? A. Yes, Sir.

Q. And what time in the day, as near as you can remember, was it when you went there? A. It was toward evening, Sir, I think.

Q. Did you have an interview with him? A. Yes, Sir.

Q. In what part of his house? A. In his study.

Q. Is that on the first or second floor? A. It is on the second or third floor, Sir—I believe second floor or third.

Q. State, if you please, what that interview was? A. I told Mr. Beecher that I had taken the retraction to Mr. Tilton, and that I had told Mr. Tilton that it would have been very foolish for him to have carried his threat of the morning into execution. I told him that Mr. Tilton was pleased with my having procured the retraction, and that I told Mr. Beecher that Mr. Tilton seemed to me to be—

[Mr. Evarts objected.]

Mr. Fullerton—No, Sir, not at all; it is what he narrated to Mr. Beecher. A. I told him that I thought that—I told him that Tilton told me that he had made up his mind that, no matter what came to himself, he would undertake to protect the reputation of his wife at all hazards. Then Mr. Beecher said to me that he was in misery on account of the crime that he had committed against Theodore Tilton and his wife and family; he said that he would be willing to make any reparation that was within his power; he said that Mr. Tilton, he thought, would have been a better man under the circumstances in which he had been placed than he had been; that he felt that he had done a great wrong, because he was Theodore Tilton's friend, he was his pastor, he was his wife's friend and pastor, and he wept bitterly; and I said to him, “Mr. Beecher, why don't you say that to Mr. Tilton, why don't you express to him the grief you feel, and the contrition for it. You can do no more than that, and I think I know Theodore Tilton well enough to know that he would be satisfied with that, for I know he loves his wife.” Mr. Beecher told me to take pen and paper and to write at his dictation, and I did write at his dictation the letter of January 1, 1871.

Q. What was done after you wrote that letter? A. I read the letter to him, and he read it, and then he signed—

Q. Never mind, we will show that in a moment. You say you read it to him? A. Yes, Sir.

Q. Did you read it as it was? Yes, Sir, and as it is.

Q. Did he take it and read it? A. Yes, Sir.

Q. Do you mean to be understood that you read it to him, and that he read it afterward for himself? A. Yes, certainly.

Q. And did he write anything himself upon that paper or those—add anything to that letter? A. Yes, Sir.

Q. Is that the letter of which you speak? A. Yes, Sir, that is it.

Q. What part of it is in the handwriting, if any, of Mr. Beecher; the words at the foot of the last page? A. Yes, Sir.

Mr. Fullerton—I propose to read it in evidence.

[Letter submitted to Mr. Evarts.]

Q. Before reading the letter I want to ask you if you wrote it down as he dictated it? A. Word for word.

Mr. Fullerton (reading): "BROOKLYN, January 1, 1871.

"In trust with F. D. Moulton.

"MY DEAR FRIEND MOULTON:

"I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself; I even wish that I were dead. But others must live and suffer. I will die before any one but myself shall be inculturated. All my thoughts are running towards my friends, toward the poor child lying there and praying with her folded hands. She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have. I humbly pray to God that he may put it in the heart of her husband to forgive me. I have trusted this to Moulton in confidence. "H. W. BEECHER."

Q. Now, let me ask you, if those words which I read last, to wit: "I have trusted this to Moulton in confidence. H. W. Beecher," is what he wrote upon that paper? A. Yes, sir.

Q. In your conversation with Mr. Beecher, before the writing of that letter, you spoke something of a threat having been made: what threat did you refer to?

Q. Mr. Evarts—Did he repeat it to Mr. Beecher?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—If he repeated it to Mr. Beecher, he may testify to it; otherwise, not.

Mr. Fullerton—I should not attempt to prove it, if he had not.

Mr. Evarts—Yes, but I want the witness to understand that.

A. I told Mr. Beecher that Mr. Tilton had said that for the offense of having gone to his wife and procured that retraction, he would smite him.

Q. By Mr. Fullerton—And in your narration to Mr. Beecher, I understood you to say that you told him that you had said to Theodore that it was better that he had not put that threat in execution? A. Yes, certainly.

Mr. Evarts—That it would have been foolish.

Mr. Fullerton—Yes, whatever it was. [To the witness]. Now what was done after this paper was signed? A. Well, I left the house after having bid Mr. Beecher good-bye at the head of the stairs. The last thing that he said to me was this, that he wanted me to do my utmost for peace.

Q. And then did you separate? A. Yes, Sir; that is all that I at present remember that he said.

Q. Now, up to this time, did Mr. Beecher say anything upon the subject of having given advice in regard to any domestic difficulty between Mr. and Mrs. Tilton, or in respect of Tilton's dismissal from *The Independent* and *The Brooklyn Union*? A. Not that I remember. Sir.

Q. Did anything more occur on January the 1st than you have now related? A. No, not that I at present remember.

Q. When, if at all, did you show this letter of January 1st to Mr. Tilton? A. On the same evening.

Q. And when did you see Mr. Beecher next again? A. I think on January 2. I called at his house.

Q. A little louder? A. I called at his house on January the 2d, in the afternoon.

Q. And how did it happen that you went there January 2d? A. By invitation.

Q. Oh! well, state? A. Mr. Beecher invited me on January 1st to come January 2d.

Q. And in pursuance of that invitation you went? Yes, Sir.

Q. What occurred on the 2d of January? A. I told Mr. Beecher that Mr. Tilton's disposition seemed to me to be one that would insure the keeping down of the story; that I thought he had nothing to apprehend from Mr. ——. I told him that I thought he had nothing to apprehend from Mr. Tilton, because Mr. Tilton seemed still intent upon protecting his family.

Q. Well, what else, if anything? A. That is the substance of what I remember.

Q. Where did that interview take place? A. Up in his study or chamber, I forget which; in his study, I think.

Q. When did you next see him after January 2d? A. Ah! January the 2d Mr. Beecher asked me if I thought that it would be safe to have the sale of Plymouth pews go on.

Q. And when did he ask you that question? A. Asked it of me at the head of the stairs, on the evening of January the 2d.

Q. Well, tell us all he said upon that subject, if there was anything more? A. There was nothing more.

Q. What reply did you make? A. I told him that I thought it would be perfectly safe to have the sale of Plymouth pews go on; I felt perfectly assured that Mr. Tilton would do nothing against him or against his family.

Q. Did you learn from him, or did you then know, of your own knowledge, when the sale was to take place? A. No; I don't remember that I did know: it was to take place sometime during the next week.

Q. Up to this time had Mr. Beecher told you when these relations existing between himself and Mrs. Tilton ceased?

Mr. Evarts—Well, we would like to have the conversations, if there are any.

Mr. Fullerton—Well, there are some, and we will go on and give them.

A. He told me that, Sir, on January the first.

Q. Now what was said upon that subject? A. He said that Elizabeth Tilton had sent for him to come to her house, and told him that she believed that their relations were wrong, and he told me that he said to her, "If you believe these relations wrong, then they shall be terminated;" and he told me that he prayed with her, prayed to God with her, for help to discontinue their sexual relations.

Q. Anything else said at that time? A. And that he had from that time discontinued his intercourse with her.

Q. Did he say when that occurred? A. I think in July, 1870.

Q. Now, in any of these interviews was a letter which Mr. Tilton had written, or proposed to write, to Mr. Bowen, the subject of conversation? A. I told Mr. Beecher on January the second that Mr. Tilton was writing a letter to Mr. Bowen.

Q. Did you tell him the substance of that letter as you understood it? A. Yes, Sir.

Q. What did you say upon that subject? A. I told him that I should try to control that letter; that I should not only do



that, but do everything else that was in my power, according to my best judgment, to prevent any outbreak.

Q. Well, if you stated what you understood the contents of that letter to be, or what they were to be to Mr. Beecher, I want you to give the conversation. A. Why, I told him that Mr. Tilton intended to write to Mr. Bowen the substance of the interview between himself and Oliver Johnson, and that he intended to publish the letter, in order to give to the public an exact account of the severance of his relations with Mr. Bowen, and I told him (Mr. Beecher) that I should undertake to keep out of that letter anything that concerned Mr. Tilton and his family and Mr. Beecher.

Q. Now, what were the relations existing between Mr. Bowen and Mr. Tilton before they were severed?

[Objected to by defendant's counsel.]

Mr. Fullerton—I suppose that is proper, as spoken of in this conversation?

Mr. Evarts—Anything that he said to Mr. Beecher on that subject.

Mr. Fullerton—Well, I can prove something else besides that; I can prove the outside fact of those relations.

Mr. Evarts—I don't know that you can.

Mr. Fullerton—It does not follow that I cannot prove it because you don't know it. If you have any objection why we will hear it, of course.

Mr. Evarts—Whatever he saw, whatever he heard, is good evidence, provided the subject itself is admissible. But to ask this general statement about what the relations of Mr. Bowen and Mr. Tilton were is not evidence. How is he to find out what the honest relations were between Mr. Bowen and Mr. Tilton. Whatever he saw or heard between raises the question then whether the subject is admissible. But his judgment does not.

Mr. Fullerton—I do not ask his judgment; I ask the fact as to the relations existing between Mr. Bowen and Mr. Tilton. They now come in question.

Judge Neilson—Well, I think you ought to be content with his general statement that they were friendly, or not; if you go beyond that it ought to be communicated to the defendant—the conversation.

Mr. Fullerton—Why, Sir, I suppose it is competent for me to show that Mr. Bowen was the proprietor of *The Independent*.

Judge Neilson—Certainly.

Mr. Fullerton—And that Mr. Tilton was in his employ as an editor. I propose to show, also, that he had a relation to *The Brooklyn Union*, and another newspaper in this city.

Mr. Evarts—I have no objection to that—their relations.

Judge Neilson—Well, go on.

Mr. Evarts—You can prove them by him or by any body else.

Mr. Fullerton—Well, that is what I propose to do. I suppose the gentleman understands some things without my saying much about them. He spoke of severed relations with Mr. Bowen. [To the witness]. Now, I want to know what those relations were. A. He was associated with Mr. Bowen as editor of *The Union*.

Q. By Mr. Hill. Was then, or had been? A. He had been, Sir.

Q. Now, as to *The Independent*? A. He had been editor of *The Independent* and had made a contract as contributor to *The Independent*.

Q. Now repeat, if you please, what you said to Mr. Beecher in regard to this proposed letter of Mr. Tilton to Mr. Bowen, respecting what had theretofore taken place between them? A. I told him that he intended to publish that letter to make clear the reason for the severance of their relations.

Q. And it was that letter, that I understand you, you were going to try to control? A. Yes, Sir.

Q. So as to keep out of it anything of the personal matters between Mr. Beecher and Mr. Tilton—is that it? A. Yes, Sir.

Q. Very well, now, what else occurred at that time, if you remember anything else? A. I don't remember just at present anything else.

Q. Do you know anything, or did you learn anything from Mr. Beecher in regard to a letter which he had written to Mr. Bowen? A. He told me that he had written a letter to Mr. Bowen explaining—taking back something that he had said about a lady to Mr. Bowen. He had told me previously—I omitted that, Sir—he had told me previously that he had insinuated—as I told him before, the interview of December 31st, and then he told me on January 1st that he had mentioned a lady's name to Mr. Bowen, and I told him that that was very unjust, and he said he would take it back, and on January 2 he told me that he had written to Mr. Bowen taking it back.

Q. By Mr. Evarts—Unjust to whom? A. Unjust to the woman, Sir.

Q. Well, did he show you the letter? A. Yes, Sir, he showed me the rough draft of the letter, either on that occasion, or a day or two afterward.

Q. Look at the paper now shown you, and say whether that is the rough draft he showed you? A. Yes, Sir; that is it.

[Paper shown to defendant's counsel.]

Mr. Fullerton—[Reading] “Brooklyn, January 2d, 1871.

“MY DEAR MR. BOWEN: Since I saw you last Tuesday I have reason to think that the only cases of which I spoke to you in regard to Mr. Tilton were exaggerated in being reported to me, and I should be unwilling to have anything I said, though it was but little, weigh on your mind in a matter so important to his welfare. I am informed, by one on whose judgment and integrity I greatly rely, and who has the means of forming an opinion better than any of us, that he knows of the whole matter about Mrs. B.” Shall I—

Judge Neilson—No; do not give the name at length.

Mr. Evarts—What does your Honor say?

Judge Neilson—Not to give the name at length; there is no occasion for it.

Mr. Evarts—Well, they must have the responsibility of reading letters or not reading them.

Mr. Beach—We take the responsibility, Sir, of giving the initials of the name.

Mr. Evarts—Will your Honor let the letter be imperfectly read?

Mr. Beach—If you want it, read it.

Mr. Evarts—Not at all; we don't read the letter, or offer it.

The responsibility is with the counsel to read the letter or omit the letter.

Judge Neilson—It does not follow, however, that the letter is to be omitted because it may contain the name of a third person, which name ought not to be given publicly. A letter might contain matter material and proper to be given, and contain the name of a third person not proper to be given. So, for the present, I make the suggestion to the counsel.

Mr. Evarts—Your Honor does not intend to rule that letters can be imperfectly read?

Judge Neilson—No.

Mr. Fullerton—It is not an imperfect reading of the letter; it is a withholding of the whole name in the interest of decency and propriety, not to arraign a person here who ought not to be arraigned.

Mr. Evarts—Your Honor does not now rule that they have a right to read the letter imperfectly?

Judge Neilson—I rule that, if the letter be at all material, they may read it, omitting the name of the third person referred to.

Mr. Evarts—To that we except.

Judge Neilson—The name of the third person referred to not being at all material.

Mr. Evarts—That we don't know.

Mr. Beach—We give the letter in evidence, and we read such part as we choose.

Mr. Fullerton—Yes, Sir; and the gentlemen can read the whole name if it subserves their purpose.

Judge Neilson—If you put in a paper, and read a few lines of it, it is all put in by you. The other side, if they desire, can read the rest of it, because you have put it in.

Mr. Evarts—Your Honor will allow us either to except, or else have it understood that the whole letter is considered as read.

Judge Neilson—Oh! the whole letter is in.

Mr. Evarts—And considered as read?

Judge Neilson—But they read such portion now as they chose, and if you read any portion of it you will be reading the document which they put in.

Mr. Evarts—I understand we will consider it all in.

Judge Neilson—Yes, Sir.

Mr. Fullerton—(Resuming the reading.) "I am informed by one on whose judgment and integrity I greatly rely, and who has the means of forming an opinion better than any of us, that he knows the whole matter about Mrs. B——, and that the stories are not true, and that the same is the case with other stories. To this I do not wish any reply. I thought it only due to justice that I should say so much. Yours,

"H. W. BEECHER."

Q. Now, when did you next have an interview with Mr. Beecher, and where? A. Within the next—within that week; I do not remember the day; I think it was the third or fourth.

Q. And where? A. At my house.

Q. Under what circumstances? A. Mr. Beecher came to the house to see me; I was at home, and Mr. Tilton was there, and they met in my presence.

Q. State whether, as far as you know, that meeting was accidental or not between those two gentlemen? A. It was accidental.

Q. Now, what occurred? A. Well, Mr. Tilton was not cordial, Sir.

Q. Now, what occurred? A. Well, Mr. Tilton was not cordial.

By Mr. Evarts—What occurred? A. Do you mean what was said?

Q. No; we want the facts first. I do not want what took place.

Mr. Fullerton—Well, I will submit that the witness has stated there was a want of cordiality between these parties on that occasion, and I want to ask him now how that was manifested.

Mr. Evarts—Not in the first place. We are certainly entitled to the facts first. I will ask the Court to decide between us.

Mr. Fullerton—I am proceeding in the proper way, and I very much dislike these interruptions, without cause, on the part of counsel.

Mr. Evarts—If your Honor please, the counsel gets a construction, and then proceeds to give the facts. Since an issue has been made, I submit that counsel cannot give a construction of what occurred, and then proceed to give the facts. He may give the construction, and then, possibly, not give the facts. We will have the facts first, as the law requires, and then we will put our construction on them, and the jury will put theirs.

Mr. Fullerton—It is a fact in this case whether upon this occasion these parties met cordially or not. It is a fact whether Mr. Tilton greeted Mr. Beecher cordially or not. That is a fact in this case.

Judge Neilson—Well, that is a fact depending on the opinion of the witness, and it would be more proper to ask, therefore, what the indications of a want of cordiality were.

Mr. Fullerton—I was asking him this very thing.

Judge Neilson—Very well, go on.

By Mr. Fullerton—How was that want of cordiality manifested? A. In Mr. Tilton not recognizing Mr. Beecher.

Q. Go on with the narration, please. A. I said to Mr. Tilton, in Mr. Beecher's presence: "Mr. Tilton, I think that your conduct here is wrong; that you have no business in my house to treat with such absolute discourtesy Mr. Beecher, until you have read his letter of contrition. He has, in my opinion, done everything that a man could do, up to the point of making a public statement of the facts. You cannot require any more. I think that, having received such an explanation from him of his feelings towards you, you should greet him at least civilly." And Mr. Beecher said, "Theodore, I hope that my expression of feeling towards you in my letter you will feel to be a sincere expression. I will do anything within reason that you may ask me to do to make reparation for the wrong I have done you. I don't see what I can do, but if there is anything proper that I can do, I should like you to indicate it." That was the substance of the conversation between Mr. Beecher and Mr. Tilton and myself, and the result of that conversation between Mr. Beecher and Mr. Tilton was that Mr. Tilton told Mr. Beecher that he certainly intended to protect his family, and that was the substance of it.

Q. What degree, if any, of emotion was manifested on that occasion? A. There was emotion manifested by Mr. Tilton,



for he turned upon me very fiercely, and said, "How can you expect me to greet this man cordially?"

Q. What was the state of Mr. Beecher's mind, as indicated by any outward emotion? A. Sorrowful, Sir. He was in tears.

Q. Have you now related all that occurred at that time, as you remember it? A. As far as I at present remember; yes, Sir.

Q. Did you see Mr. Beecher after that, and if so, when and where? A. I saw him very frequently at my house.

Q. Give us the next meeting that you recollect of? A. It was before the 10th of January.

Q. What occurred then? A. I read to Mr. Beecher the letter which Mr. Tilton had written to Mr. Bowen.

[Letter handed to witness.]

Q. Look at the paper I now show you, and say whether that is the letter you then read to him? A. Yes, Sir, that is it. This letter recalls the fact, that I don't know whether I mentioned or not, that Mr. Beecher returned to me the letter that Mr. Bowen gave to him.

Q. Repeat that. A. Mr. Beecher returned to me the letter that Mr. Bowen gave him—the letter written to Mrs. Tilton on December 26.

By Mr. Evarts—Do you mean he did at this time? A. No, Sir; January 1, I think it was.

Mr. Fullerton—I offer this letter in evidence.

Mr. Evarts—He means to say that is the very paper he showed to Mr. Beecher.

The Witness—Yes, Sir.

By Mr. Fullerton—In whose handwriting is the paper? A. Theodore Tilton's.

Mr. Fullerton—I will now read the letter from Mr. Tilton to Mr. Bowen, dated Brooklyn, Jan. 1, 1871:

"BROOKLYN, Jan. 1, 1871.

MR. HENRY O. BOWEN—

SIR: I received last evening your sudden notices breaking my two contracts—one with *The Independent*, and the other with *The Brooklyn Union*.

With reference to this act of yours I will make a plain statement of facts.

It was during the early part of the Rebellion (if I recollect aright) when you first intimated to me that the Rev. Henry Ward Beecher had committed acts of adultery for which, if you should expose him, he would be driven from his pulpit. From that time onward your references to this subject were frequent, and always accompanied with the exhibition of a deep-seated injury to your heart.

In a letter which you addressed to me from Woodstock, June 16, 1873, referring to this subject, you said: "I sometimes feel that I must break silence, that I must no longer suffer as a dumb man, and be made to bear a load of grief most unjustly. One word from me would make a revolution throughout Christendom, I had almost said—and you know it. \* \* \* \* You have just a little of the evidence from the great volume in my possession \* \* \* I am not pursuing a phantom, but solemnly boding over an awful reality."

The underscorings in this extract are your own. Subsequently to the date of this letter and at frequent intervals from then till now, you have repeated the statement that you could, at any moment, expel Henry Ward Beecher from Brooklyn. You have reiterated the same thing not only to me, but to others.

Moreover, during the year just closed, your allusions to the subject were uttered with more feeling than heretofore, and were not infrequently couched with your emphatic declaration

that Mr. Beecher ought not to be allowed to occupy a public position as a Christian preacher and teacher.

On the 26th of December, 1870, at an interview in your house at which Mr. Oliver Johnson and I were present, you spoke freely and indignantly against Mr. Beecher as an unsafe visitor among the families of his congregation. You alluded by name to a woman, now a widow, whose husband's death you had no doubt was hastened by his knowledge that Mr. Beecher had maintained with her an improper intimacy. You avowed your knowledge of several other cases of Mr. Beecher's adulteries. Moreover, as if to leave no doubt on the mind of either Mr. Johnson or myself, you informed us that Mr. Beecher had made to you a confession of his guilt, and had with tears implored your forgiveness."

I propose not to read a part of that letter, gentlemen. I shall omit, commencing with the words, "after Mr. Johnson retired from this interview." \* \* \* \* [The letter then continues.]

"During your recital of the tale you were full of anger towards Mr. Beecher; you said with terrible emphasis that he ought not to remain a week longer in his pulpit. You immediately suggested that a demand should be made upon him to quit his sacred office. You volunteered to bear to him such a demand in the form of an open letter, which you would present to him with your own hand; and you pledged yourself to sustain the demand which this letter should make—namely, that he should, for reasons which he explicitly knew, immediately cease from his ministry of Plymouth Church and retire from Brooklyn.

The first draft of the letter did not contain the phrase 'for reasons which he explicitly knew,' and these words, (or words to this effect), were incorporated in a second, at your motion. You urged, furthermore (and very emphatically), that the letter should demand not only Mr. Beecher's abdication of his pulpit, but cessation of his writing for *The Christian Union*, a point on which you were overruled. This letter you presented to Mr. Beecher, at Mr. Freeland's house. Shortly after its presentation, you sought an interview with me in the editorial office of *The Brooklyn Union*, during which, with unaccountable emotion in your manner, your face livid with rage, you threatened with a loud voice that if I ever should inform Mr. Beecher of the statements which you had made concerning his adultery, or should compel you to adduce the evidence on which you agreed to sustain the demand for Mr. Beecher's withdrawal from Brooklyn, you would immediately deprive me of my engagement to write for *The Independent* and to edit *The Brooklyn Union*, and that in case I should ever attempt to enter the offices of these journals you would have me ejected by force. I told you that I should inform Mr. Beecher or anybody else, according to the dictates of my judgment, uninfluenced by any threat from my employer. You then excitedly retired from my presence. Hardly had your violent words ceased ringing in my ears, when I received your summary notice breaking my contracts with *The Independent* and *The Brooklyn Union*. To the foregoing narrative of facts I have only to add my surprise and regret at the sudden interruption, by your own act, of what has been, on my part towards you, a faithful friendship of fifteen years.

Truly yours,

[Signed.] THEODORE TILTON.

Q. Did you state to Mr. Beecher what Mr. Tilton proposed to do with that letter? A. Yes, Sir.

Q. What did you say to him upon that subject? A. I told him Mr. Tilton intended to publish it.

Q. What did Mr. Beecher say? A. Mr. Beecher said that the statement that he had ever confessed to Mr. Bowen, was entirely untrue; he said that he had differences with Mr. Bowen, and a settlement with Mr. Bowen, and that Mr. Bowen had never raised with him, at any such settlement, any question of adultery; he said that he presumed that he knew what one portion

of the letter referred to; I said to him, "Now, I have a business matter under the contracts to settle with Mr. Bowen of Mr. Tilton's, and I don't want to proceed to court with that claim, if taking it into court is going to rip up your relations with Mr. Tilton's family; I don't want to do that; I would rather pay him what Mr. Bowen owes him than to do that, but, Mr. Tilton," I said, "feels that he wants to publish this letter. He feels that he has taken out of it all that concerns you and your relations with his family. He wants to leave, and he is willing to leave you and Mr. Bowen in conflict," but told him that I did not approve of that. I told Mr. Beecher that I wanted to settle all matters peacefully—the Bowen question peacefully—that Mr. Bowen had acted, in my opinion, I told him, treacherously towards him, and treacherously towards Mr. Tilton. He then told me that he thought it would be necessary for him, in order that I might be guided properly in the transaction between Mr. Tilton and Mr. Bowen—that it would be necessary to tell me the truth about a certain charge made by Mr. Bowen.

Judge Neilson—Is that part of the conversation necessary?

Mr. Fullerton—I don't propose to leave it.

Judge Neilson—Omit it.

Mr. Fullerton—Let him go a little further.

Mr. Evarts—What is that?

Judge Neilson—Part of this conversation which may be material for us here, may be given without introducing that part of it which relates to a third person, and which, perhaps, may not be material.

Mr. Evarts—We know nothing about it. We would like to have the conversation.

Judge Neilson—All that relates to these parties is proper. I think that what relates to a third party ought to be omitted. I think the part that is germane to the question may be given, and that the part that is not should be left out.

Mr. Fullerton—That was my view, if your Honor please. [To the witness.] Go on now, please, and I will tell you when to stop. A. He said he thought it would be necessary to tell me the truth with regard to himself, and to what he supposed Mr. Bowen referred in the letter in the language that he used to Mr. Tilton and recited in the letter.

Q. What language did he call your attention to? A. Give me the letter and I will show it to you; I cannot repeat it.

Q. [Handing letter to witness.] Point out the part that he called your attention to. What part of the letter did Mr. Beecher call your attention to by way of explaining it? A. He said he presumed he knew to what Mr. Bowen referred in this part of the letter: "After Mr. Johnson retired from this interview you related to me the case of a woman whom you said (as nearly as I can recall your words) that Mr. Beecher took in his arms by force and accomplished upon her his devilry."

Q. Did he then go on to explain that? A. Yes, Sir.

#### ARGUMENT ON THE PROCTOR PASSAGE.

Mr. Fullerton—I will not ask what the explanation was.

Mr. Evarts—Well, if your Honor please, is that the way in which it is to be left?

Mr. Fullerton—No, not necessarily, if the other side will take the responsibility of calling it out on cross-examination.

Judge Neilson—You can call it out now, what you think is material.

Mr. Fullerton—I have called out what I think is material.

Mr. Evarts—We don't understand that to be right, to characterize a conversation as an explanation, and there leave the matter. What we are entitled to is proof of what occurred between this party and Mr. Beecher on that subject.

Judge Neilson—On this subject.

Mr. Evarts—On that passage in this letter.

Judge Neilson—On the subject that we have to deal with!

Mr. Evarts—On that passage in that letter which they have introduced as giving a conversation between Mr. Beecher and Mr. Moulton on that subject, to wit: that it was a conversation in which Mr. Beecher explained that.

Judge Neilson—If the word "explained" was used, that justifies you in taking the view you do.

Mr. Evarts—Now, they can omit calling the witness's attention to that clause in that letter, and omit interrogating him whether there was a conversation between them; but they cannot introduce it and introduce the fact that they went on to converse about it, and then dispose of it as a conversation or explanation on Mr. Bowen's part.

Judge Neilson—No, it should not appear as a matter of explanation.

Mr. Evarts—They must give the evidence, or omit it. [Applause.]

Judge Neilson—Wait a moment, gentlemen. I am very much afraid there will be fewer of us here to-morrow—many fewer, for I cannot permit this, and the learned counsel ought not to be interrupted in this way. The word "explanation" is used as giving a coloring you don't intend, perhaps, but which, at any rate, is not just.

Mr. Fullerton—I am quite willing it should be eliminated from the testimony, and I want it distinctly understood by your Honor that this is omitted out of consideration to a third person, who ought not to be dragged into this controversy, and if she is dragged in it will not be by me. I propose the Court should understand my object in omitting that part of the narration. I don't mean it shall be said of me that I am afraid of its effect on my client by any means, but it is in the interest of propriety that no third person should be brought into this controversy, unless it is actually necessary to elucidate the truth between these parties.

Mr. Evarts—If you will state that all that relates to the Proctor matter, that will be the end of it. That has been considered by another Court.

Judge Neilson—We don't propose to receive Miss Proctor here.

Mr. Evarts—I don't want, if your Honor please, a mutilation of evidence. If this witness has to be judged by this jury, he is to be judged by what he states, without the suppression of anything.

Mr. Beech—Your Honor will permit me to say, unless this should be adopted as a precedent establishing a principle in which I do not concur, that I should say a word in regard to it.



I insist that we have a right to give the whole or any part of any statement or declaration that may have been made by Mr. Beecher which we deem material to the particular matter under investigation; that it is not a rule of evidence that we should give all of what may have been said in a confession to which we have directed the attention of a witness. The material part—that which we consider essential to the interests of the party we represent—we may call out upon our examination, and if there be any part of it omitted appearing to the other side to be essential to their interests, it is entirely competent for them to give it in evidence; but it is not the rule of evidence that we shall give the whole of what Mr. Beecher may have said upon any particular occasion, material or immaterial, to the particular issue under investigation.

Judge Neilson—I understand it to be so. and to be a fundamental principle of law.

Mr. Evarts—I agree to that; but that is not the point of the inquiry.

Judge Neilson—No; that is not it.

Mr. Evarts—They may ask him what he did say, and then take what he said and stop at a certain point, and then, if we choose, to call out the rest of the conversation, it comes to us.

Mr. Beach—Mr. Evarts, will you permit me to suggest to you (as I do not wish to say anything further) that we may ask if Mr. Beecher made an explanation in regard to a given fact, and refrain from calling out that explanation?

Mr. Evarts—No, Sir.

Mr. Beach—I insist upon that proposition. We are not bound to call it out unless we choose. We may say he acted in regard to a particular matter without calling out what that action was. It may be we opened the subject as far as to permit the opposite party to give it in evidence, but we are not compelled to produce it; we are not compelled to give them any part of the declaration or any part of the acts of Mr. Beecher further than we may choose to go.

Judge Neilson—Undoubtedly, and yet it would be unsafe if you are allowed to ask witness whether the defendant made an explanation, because, in truth, what he might understand to be an explanation might not be so.

Mr. Beach—Suppose I ask if he made a declaration in regard to it, am I bound to call out that declaration?

Judge Neilson—That would be better, doubtless; but what has disturbed your opponents, I think, is the word “explanation,” which has gone on the minutes, that he has made an explanation which permits of an inference adverse to him.

Mr. Fullerton—I have already stated that that might be struck out.

Judge Neilson—The clause in which that word occurs must be struck out.

Mr. Fullerton—No, Sir; not the clause, but the explanation. What we wish to omit has no bearing upon the issue in this case.

Mr. Evarts—Ah, ah, that will depend.

Mr. Fullerton—That depends on the facts we will adduce in evidence.

Mr. Evarts—It will depend on the truth or falsity of your testimony.

Mr. Fullerton—And the truth or falsity of our testimony you may test to the uttermost.

Mr. Evarts—And we will test it by facts, but not by explanation.

Mr. Fullerton—Test it in your own way, without heralding what you are going to do so vociferously.

Judge Neilson—With my permission neither of you will test anything that is not material to the issue we are trying. I don't intend to admit anything that is not material to the trial now before me.

Mr. Evarts—Is not the truth or falsity of the testimony material?

Judge Neilson—Yes, Sir, undoubtedly, but not evidence affecting third persons. I don't desire to decide a question as to third persons, or to have third persons names implicated beyond what is necessary.

Mr. Evarts—That we agree to. We have no desire to mention their names, or to have anything to do with third persons. Let them omit calling his attention to any conversation of Mr. Beecher on that subj ct. Leave out, or else bring it in.

Mr. Fullerton—No, I wish to have it appear his attention was called to it, and that he said something, and that something we don't deem important to the general issue, and we omit it.

Mr. Evarts—Then we ask, if his attention was called to it, if it is not material?

Mr. Fullerton—Because I think it is proper to do so.

Judge Neilson—To THE TRIBUNE stenographer—Strike out from and after, “What did he call your attention to?” You may take an exception, Mr. Fullerton, if you desire to do so.

Mr. Evarts—That phrase ought to be struck out.

Judge Neilson—Yes, from and after that. After all, you have what comes within the rule as stated by yourselves.

Mr. Fullerton—I think not, Sir.

Judge Neilson—I think we had better rule that out.

Mr. Fullerton—If your Honor please, I don't mean, if any effort of mine can prevent it, that this witness shall be placed in a false attitude, and that is what my adversaries are seeking to accomplish, in my judgment.

Judge Neilson—I don't see it in that light.

Mr. Fullerton—It may be very fair for them in the conduct of their cause; I shall not criticise their course: I am only saying I don't mean Mr. Moulton shall be placed in an attitude he ought not to occupy with reference to this branch of the case.

Judge Neilson—Certainly; but we can look at that afterwards.

Mr. Fullerton—I don't mean that it shall lie in their power, when we are through with this case, to say that he has, on any occasion heretofore, made a statement of this interview in which he has related something that took place which he has omitted here, unless it appears here that he omitted it because he was requested to do so.

Judge Neilson—That appears now, and it saves your right.

Mr. Fullerton—I don't think so; I don't think it clearly appears.

Judge Neilson—Really, as the case now appears, it does not seem to me to be material. If it becomes material hereafter to protect the witness, we can consider that.

Mr. Evarts—Requested by whom, your Honor?

Judge Neilson—Requested by the Court. I desire to leave this third person out altogether.

Mr. Evarts—Does your Honor undertake to say I requested this witness to leave a part of that out?

Judge Neilson—No; it appears on the minutes that it was left out at my suggestion. It appears, also, that the learned counsel, out of consideration to the witness, thinks that it ought to come in in some degree, and apprehends that if it does not it might operate hardly on the witness, and I have suggested to him that hereafter, if the case should call for any such protection of the witness as claimed now, even though it is now ruled out at my instance, the witness should be protected to that extent.

Mr. Fullerton—What is it?

Judge Neilson—The clause in question.

Mr. Fullerton—It don't appear on the minutes. If your Honor will allow the reporter to read it we can tell better whether our object is accomplished or not.

Judge Neilson—It is all there, and we can refer to it.

The Court here directed THE TRIBUNE stenographer to read the testimony referred to and to strike out the clause objected to. This was done.

Mr. Evarts—Do I understand your Honor to say that it appears at a certain stage of the examination of this witness that the Court requested him not to proceed further with his statement?

Judge Neilson—Yes, Sir; because it relates to a third person.

Mr. Evarts—Will your Honor be so good as to note our exception?

Judge Neilson—Yes, Sir; and because it is not material to the very question we are inquiring into.

Mr. Evarts—Will your Honor please note our exception to that direction of the Court in respect to that order of the evidence?

Judge Neilson—Yes, Sir; and also the exception of the plaintiff's counsel to the order I have made striking it out.

Messrs. Beach, Morris and Pryor (speaking together)—We don't want any exception.

#### RESUMPTION OF MOULTON'S EXAMINATION.

By Mr. Fullerton—Now, have you given us all that was said by Mr. Beecher at that interview when this letter of Mr. Tilton to Mr. Bowen was read, with the exception of what has been omitted by request? A. No, Sir.

Q. Go on with the narration? A. He said he thought the publication of the letter would result in mischief, and I told him that I would undertake to prevent its publication; that I thought I could induce Mr. Bowen without a suit to pay that money, and I would endeavor to do it, and he said he hoped I could, or words to that effect.

Q. What money was it? A. Money under the contracts due Mr. Tilton. I told Mr. Beecher that I had waited upon Mr.

Bowen at The Union office with reference to that money, and Mr. Bowen told me he didn't owe Mr. Tilton any money.

Q. Anything more at that time? A. Not that I remember just at present.

Q. Then we will proceed to the next interview between yourself and Mr. Beecher, if there was one, and state when it was and where? A. There were frequent interviews; I don't remember the next one particularly.

Q. At any one of these interviews that you have spoken of, or at any subsequent interview, was the girl Bessie Turner spoken of. A. Yes, Sir; there was a girl named Bessie Turner spoken of.

Q. When—in what interview? A. I think the interview was subsequent to the one we have just narrated.

Q. And when was it, as near as you can tell? A. I should think it was before the 15th of January.

Q. And where did it take place? A. It took place in my house.

Q. State what it was, if you please? A. I told Mr. Beecher, or rather in an interview between Mr. Beecher and myself, he had told me something that Bessie Turner—I don't remember what it was he told me—he told me Bessie Turner had said something to him concerning Mr. and Mrs. Tilton, and I told Mr. Beecher that Mr. Tilton thought Bessie Turner was a dangerous person to have about; that she was what Mr. Tilton termed—I remember his term—"a prattler," and knew (so Mr. Tilton told me) of the facts as between Mr. Beecher and Mrs. Tilton, and I said to Mr. Beecher, I thought she was better out of the way than here, and Mr. Beecher said he thought so too, and Mrs. Tilton then told Mr. Tilton (so Mr. Tilton told me) that the best place for her was out West at school, and I told Mr. Beecher that Mr. Tilton could not afford to pay her expenses, and he said to me, "Well, I will pay the expenses, or I will do anything that is necessary to keep this story down," and he approved; he said that he thought it was a good plan to send her to school, and he would pay the bills.

Q. You may state whether she was afterwards sent away to school? A. Yes, Sir; she was, to Ohio.

Q. Who superintended that? A. Who superintended the sending of her to school?

Q. Yes, Sir. A. I suppose Mr. Tilton did; I didn't.

Q. Did you superintend or have anything to do with it? A. No, Sir.

Q. What connection had you with the payment of the expense of it afterwards, if any? A. I paid the expenses.

Q. Of her schooling? A. Yes, Sir; and Mr. Beecher paid me.

Q. How many different payments did you make, do you recollect? A. I don't remember; I paid all the bills that were presented.

Q. Afterwards how did you receive your money from Mr. Beecher? A. By check and currency.

Q. How did you receive the bills? A. I think generally from Mrs. Tilton.

Q. Did you ever receive them any other way than through Mrs. Tilton; if so, state them? A. No, Sir, I don't think so.

Q. State whether you forwarded the money or your check on



• Ohio in payment of it; state how it was done? A. I generally forwarded the checks to the order of the principal of the school.

Q. Then what did you do afterwards towards reimbursement? A. Mr. Beecher reimbursed me.

Q. What did you do? Did Mr. Beecher come without any solicitation on your part, or did you send him word or write him a note? A. Sent him word.

Q. How did he make the payments to you? A. Generally in checks.

Q. Sometimes otherwise? A. Yes, Sir.

Q. How otherwise? A. In currency.

Q. And how long did that continue? A. For two or three years, I think.

The Court here adjourned until Thursday.

#### FOURTH DAY'S PROCEEDINGS.

##### MR. MOULTON'S EXPLANATIONS OF THE LETTERS.

THE DIRECT EXAMINATION OF THE WITNESS NOT OVER YET—MR. EVARTS AND MR. MOULTON FACE TO FACE—HEATED DISCUSSIONS BETWEEN COUNSEL—WHY MR. MOULTON WAS CALLED BEFORE MR. TILTON.

Francis D. Moulton resumed the witness-chair with the same briskness and self-confidence which he had displayed on the previous afternoon. There was less color in his face and his demeanor was more collected, although he still lacked the art of concealing his efforts to appear at ease. Self-consciousness is betrayed by hands, feet, and figure. He is constantly changing his position, alternately bending forward and straightening himself, his hands straying nervously from pocket to coat-lapel, and then toying with his hair, mustache, handkerchief, watch-chain, or the arm of the chair. His mild eyes are not quite so restless, although a quick sidelong glance is more natural than a steady gaze. His dress has a conscious air of studied carelessness. His manner is open and frank and his utterance is always distinct, although the tones are soft and measured, sometimes degenerating into an effeminate lisp. His manner varies somewhat; at times he speaks quickly, with business-like directness; then again he weighs his words and replies cautiously and carefully, like a man feeling his way over dangerous ground. There is a painful lack of earnestness in the man, if his bearing does him no injustice. When the gravity of the issue is considered, his replies to the most vital questions often seem flippant. He asserts that the greatest preacher in America

confessed adultery to him, and his manner is that of a listless gentleman giving his verdict upon a novel brand of champagne. He talks and acts like a man who is slightly bored with the whole subject, his mustache concealing a sneer as if this scandal-tragedy after all, to "a man of the world," is a sort of low comedy or broad farce.

Inasmuch as Mr. Moulton's main office yesterday was to identify the correspondence which had been placed in his keeping, his testimony was not, on the whole, so important as it was on the preceding day. The ordeal through which he passed was not so trying save at the close, when a foretaste of the manner in which the cross-examination would be conducted was afforded. He identified the various letters which were handed to him with great caution, reading them through and inspecting the indorsements with a business-like air. When the letter in which Mr. Beecher referred to him as a possible "priest in a new sanctuary," was read, a flushed face and downcast eyes betrayed his annoyance. After recess there was a change in his manner—the words coming faster, and less hesitation being manifested. Once he forgot himself. He was asked to describe Mr. Beecher's manner, and replied, with a coarse sneer, "Oh, he wept as usual!" When he repeated his words to Mr. Beecher in reference to Mrs. Woodhull, that he thought that she was amenable to moral influences, there was a ripple of amusement in the court-room. His advice to Mr. Beecher not to notice the Woodhull publication, as "silence would kill that story," was repeated in a harsh, grating tone, and in admitting that he had made false replies to several persons, denying that Mr. Beecher was an impure man, his voice lost none of its strength and fullness. In quoting Mr. Beecher's alleged remarks to him involving the disgrace of soliciting favors from a woman and being rejected, as a man of the world he expressed his approval of the sentiment so candidly and unreservedly that the spectators laughed heartily until the Judge rebuked their indiscretion.

When a copy of Mr. Beecher's resignation, embodied in a memorandum which Mr. Moulton dictated from memory to Mr. Tilton, was introduced, the prosecution called upon the defense for the original, and Mr. Evarts, irritated by ex-Judge Fullerton's remarks, drawled out, "We—have—no—such—paper." Mr. Evarts was then permitted to ask Mr. Moulton a few questions. As a foretaste of the rigor with which the cross-examination will be conducted, this was perhaps the most ex-

citing incident of the day. Mr. Moulton braced himself in his seat and answered in a high key and a rapid manner. Mr. Evarts was not long in ferreting out the fact that Mr. Beecher was in an upper room at the time, and that there was no reason why Mr. Moulton could not have gone up stairs and procured the original demand of tanning in his memory in the dictation. Mr. Moulton was intensely excited, but made a violent effort to control himself and to meet Mr. Evarts's searching eye without flinching. The questions came quick and fast, and Mr. Evarts showed that he was master of the art of cross-examination.

#### PASSAGES AT ARMS BETWEEN COUNSEL.

One of the most interesting features in this case is the fine fencing between the counsel. As the testimony of the morning related mainly to the introduction and identification of the scandal literature, the proceedings would have been dull and monotonous if it had not been for the passages at arms between the contending camps. The intense earnestness of the senior counsel on each side, and the bristling manner of ex-Judge Fullerton, combined to render this legal skirmishing intensely exciting.

Ex-Judge Fullerton conducts the examination of a witness with consummate ability. His manner is so smooth and his questions are so direct and clear that even the most nervous of witnesses takes heart and recovers composure. He is exceedingly quick in retort, resents interruptions and interference from the other side, gives blow for blow, and, when he is defeated, opens a way for his retreat and retires in good order. He is exceedingly adroit at times, and when his opponents expose his sharp practice his assumption of dignity is so well timed that the edge is taken from his discomfiture. He bristles up at a single word from Mr. Evarts, fights hard, and only abandons the ground when he is compelled by the judge's decision. He brooks neither dictation nor criticism, and clings tenaciously to his own method of presenting the evidence. An incident will illustrate his shrewdness and coolness under defeat. Mrs. Morse's rambling letter to Mr. Beecher had been read and Mr. Moulton had repeated Mr. Tilton's admission that the skeleton in the closet of the Livingston-st. household had been exhibited, not to twelve people, but to Mrs. Bradshaw and Oliver Johnson. The lawyer was anxious to bring out another name, but the witness was evidently unwilling to drag it in. Others might have been mentioned, but he could

not remember. After vainly endeavoring to arouse Mr. Moulton's memory from a state of coma the counsel dropped the subject only to return to it unexpectedly with the innocent question, "When Mr. Tilton referred to Mr. Robinson, did Mr. Beecher?" &c. Mr. Evarts burst out laughing and made a scornful gesture which would have been directed at one else, but ex-Judge Fullerton made a dignified retort and passed on as if nothing had happened.

Mr. Evarts is always on the alert, and his speeches are marvels of clearness and compactness. He sits in front of Mr. Beecher's other defenders and directly behind Mr. Tilton's lawyers. His position is typical, for he is the head and front of the defense, and presses the prosecution very closely. He is a thorough master of the art of worrying a witness and the opposing counsel. Whenever Mr. Moulton becomes indirect in his testimony, a dry hint from Mr. Evarts, such as "State what took place," or, "What was said to him, and what did he say?" holds him in check with a tight rein. On the preceding day the counsel's peculiar dryness was finely illustrated when Mr. Moulton was describing in an airy way the pistol scene, and conveying the impression that he had merely touched his pistol to emphasize his promise to protect the retraction with his life. The effect of Mr. Moulton's ingenious device was utterly spoiled by the interruption, "You took it out?" the words being so dry as almost to crackle. "Yes," said the witness, utterly disconcerted. Mr. Evarts is a thorn in ex-Judge Fullerton's side, for his interruptions are frequent, and he is not a man to be easily shaken off. He will have the evidence presented with the precision which the law demands, and he will have nothing else. In the smallest details he is persistent and tenacious, and his mastery of the principles of evidence enables him to worry his adversaries without taking an untenable position himself. His gravity, dignity, earnestness, and self-command were manifested in the sharp argument over the manner in which Mrs. Morse's letter should be presented in evidence. When he speaks, there are changes of tone which vibrate through an audience with electrical effect. His earnestness is something terrible, and, although his eyes flash and the tension of his voice is so full that it seems as if it must break, his self-command is perfect. He never wastes a word, and in his clearness of statement and grasp of the subject seems to have an advantage over his opponents. The sharp passage of arms over the introduction of Mr. Tilton's "true statement," in which Mr. Evarts



was compelled to content himself with an exception, was the most exciting of the day. "He had a written statement from which he read, and we want that paper. We want it according to the rules of evidence. I have a right to the points of law." Mr. Evarts's sentences are as direct, incisive, and clear as these.

Mr. Beach sprang to the rescue of ex-Judge Fullerton yesterday two or three times. He, too, is thoroughly in earnest, and his delivery has many elements of power. The elaborate appeal which he made in reference to Mrs. Morse's letter was delivered with splendid power and emphasis, his command of language being remarkable and his gestures direct and forcible. He had not comprehended his opponent's point, however, and Mr. Evarts in two or three quiet sentences at the close dashed cold water upon his misplaced eloquence. Mr. Beach can be as dry as Mr. Evarts. When the latter asked if he was to have an opportunity for reply, Mr. Beach quietly remarked that Mr. Evarts had already taken advantage of abundant opportunities. Again, when Mr. Evarts had called for an envelope of one of the so-called clandestine letters, and ex-Judge Fullerton had introduced first an envelope and then a letter and had then admitted reluctantly that he could not connect them, Mr. Beach by a caustic reply took the edge from Mr. Evarts's indignant protest against the tactics of the prosecution.

#### THE DAY'S TESTIMONY.

There was little in the testimony of the day that was novel. It began with the introduction of Mrs. Morse's anomalous letter to Mr. Bowen and the so-called "clandestine correspondence," and included the three letters which were exchanged between Mr. Tilton, Mr. Beecher, and Mrs. Tilton, those which passed between Mr. Beecher and Mr. Moulton in reference to the investigation of Mr. West's charges, the Woodhull scandal, and other elements of the controversy. An important hint was thrown out in regard to Mr. Carpenter's interview with Mr. Beecher in which, as alleged by ex-Judge Morris in his opening remarks, a confession of guilt was made. It now appears that this interview was the one in which Mr. Beecher's prospects in journalism were discussed and the substance of which was given to the public last Summer. In regard to Mr. Beecher's resignation, documentary evidence was offered, but it was not so direct as the public had been led to expect.

Ex-Judge Fullerton's talents as a reader were frequently called into play, for in addition to the voluminous scandal literature which had to be read to the jury as fast as Mr. Moulton could identify the letters, there was a poem to tax his powers of elocution. This was Mr. Tilton's "Sir Marmaduke's Musings," in which, as the prosecution claim, the author told the sad story of his own domestic life. Lawyers generally talk better than they read, but this was a musical poem which required very little elocution. Ex-Judge Fullerton in reading the poem without strain or effort succeeded admirably. His deep tones rang through the court-room, and a buzz of satisfaction followed the closing lines. Mr. Tilton meanwhile sat with closed eyes, probably regretting with an author's instinct that he could not read it himself to the audience.

Ex-Judge Fullerton did ample justice to Mr. Beecher's flowing sentences. Many of the letters which the public have learned by heart have fine rhetorical passages, and their effect upon an audience is marked. The oft-quoted letters to Mr. Moulton, in which Mr. Beecher describes the varied work of his life and expresses a desire for death, was read with deep feeling, and some of Mr. Beecher's friends manifested emotion. The elocutionary exercises of the day were happily varied in character, the selections having a wide range so as to include Mrs. Morse's spiteful, incongruous letter to Mr. Beecher, the ambiguous sentences of Mrs. Tilton, Mr. Tilton's review of his interview with Mr. Bowen, and Mr. Beecher's "love letters" to Mr. Moulton.

#### COURT-ROOM CURIOSITY.

The audience was composed of about the same class of people that have appeared in court on previous days of the trial. Residents of prominence were less conspicuous. In the afternoon, however, two new visitors, ex-Police Commissioner Thomas C. Acton and Jackson S. Schultz, occupied seats near Mr. Beecher. After shaking hands with him they listened very attentively to Mr. Moulton's examination. The members of Plymouth Church who sat near the defendant on the opening of the case were in the same places yesterday. It was noticeable that they appeared more attentive, and indulged in fewer smiles than on the preceding day.

Frequently during the examination ex-Judge Fullerton was interrupted by the noise of the rabble in the corridors. Three policemen guarded the entrance to the court-room, and other officers endeavored to place in line the multitude which clamored for ad-

mission. All sorts of devices to obtain entrance were resorted to, and the officers at the door were kept very busy in rejecting bogus passes, counterfeit reporters, and illegal lawyers. In many instances \$5 and even more was offered for a single ticket of admission, yet none who were willing to sell could be found.

When the Court announced that it was time to take the regular recess, the crowd within the railings concentrated in the vicinity of Mr. Beecher. Mrs. Beecher was evidently annoyed at the rude stare of several bores who jostled about her with elongated necks and bulging eyes. Her husband, however, seemed self-possessed and good-tempered. Taking his wife gently by the arm, he led her over to Mrs. Tilton. Mrs. Beecher extended her hand, which was warmly pressed by Mrs. Tilton. The two held a short, subdued conversation, Mr. Beecher joining in it only once, with a remark that brought a smile to the faces of the ladies. There was an apparent disposition on the part of the preacher to continue the conversation, but he terminated the interview somewhat abruptly, with a stately bow to Mrs. Tilton. While the conversation was proceeding, several well-dressed but ill-mannered individuals literally shoved themselves between Mr. and Mrs. Beecher, for the purpose of hearing what was being said. When he demonstrated by leaving the courtroom in company with his wife that he was not disposed to take the public into his confidence in regard to any private conversations he might have the crowd still hung to his heels and followed him to the sidewalk.

#### THE PROCEEDINGS.

The direct examination of Francis D. Moulton, by Mr. Fullerton, was resumed instantly on the formal opening of the court on Thursday. All the principals and their counsel were in their places, except Mr. Tilton and Mr. Evarts; these came in, nearly together, at 11:15 o'clock. The crowd around the doors with tickets, for whom there was no room inside, was greater than usual, and was more demonstrative, the officers having to use much force to prevent a rush in whenever any one left the court.

#### SOME OF THE WRITTEN EVIDENCE.

Mr. Fullerton—Shall I proceed, Sir?

Judge Neilson—Judge Porter, shall we proceed?

Mr. Porter—Yes, Sir.

Francis D. Moulton recalled, and the direct examination resumed.

Mr. Fullerton—In your letter yesterday you spoke of a letter—December 26, 1870—written by Mr. Tilton to Mr. Beecher, and of which Mr. Bowen was the carrier; look at the

paper I now show you, and say whether it is the letter to which you then referred [handing witness a letter]? A. Yes, Sir.

Mr. Fullerton—I propose to read it.

TILTON'S DEMAND THAT BEECHER LEAVE THE MINISTRY.

DECEMBER 26, 1870, BROOKLYN.

HENRY WARD BEECHER:

SIR: I demand that, for reasons which you explicitly understand, you immediately cease from the ministry of Plymouth Church, and that you quit the City of Brooklyn as a residence.

(Signed)

THEODORE TILTON.

[Letter marked "Exhibit No. 4."]

Q. You also spoke of a letter written by Mrs. Tilton to her husband on the night of the 30th of December, which you showed to Mr. Beecher, or read to Mr. Beecher. Look at that letter and say whether it is the one to which you refer [handing witness a letter.] A. Yes, Sir. [Letter marked "Exhibit No. 6."]

Q. You also spoke of a letter yesterday which you obtained from Mr. Beecher, and which he, the night before, had got from Mrs. Tilton. Look at the paper I now show you, and say whether that is the paper to which you then referred [handing witness a letter]. A. That is the paper, Sir. [Letter marked "Exhibit No. 5."]

Mr. Fullerton—"Exhibit No. 5" is as follows

MRS. TILTON'S RETRACTION.

DECEMBER 30, 1870.

Wearied with importunity and weakened by sickness, I gave a letter inculcating my friend Henry Ward Beecher, under assurances that that would remove all difficulties between me and my husband. That letter I now revoke. I was persuaded to it—almost forced—when I was in a weakened state of mind. I regret it, and recall all its statements.

(Signed)

E. R. TILTON.

I desire to say explicitly, Mr. Beecher has never offered any improper solicitations, but has always treated me in a manner becoming a Christian and a gentleman.

(Signed)

ELIZABETH R. TILTON.

Mr. Fullerton—"No. 6" is as follows:

MRS. TILTON EXPLAINS HER RETRACTION.

DECEMBER 30, 1870—Midnight.

MY DEAR HUSBAND: I desire to leave with you before going to sleep a statement that Mr. Henry Ward Beecher called upon me this evening, asked me if I would defend him against any accusation in a *council of ministers*, and I replied solemnly that I would in case the accuser was any other but my husband. He (H. W. B.) dictated a letter, which I copied as my own, to be used by him as against any other accuser except my husband. This letter was designed to vindicate Mr. Beecher against all other persons save only yourself. I was ready to give him this letter because he said with pain that my letter in your hands addressed to him, dated December 29, "had struck him dead and ended his usefulness."

You and I both are pledged to do our best to avoid publicity. God grant a speedy end to all further anxieties. Affectionately,

(Signed)

ELIZABETH.

Q. Do you remember now anything that occurred when you read to Mr. Beecher that last letter? A. He seemed surprised. Sir; that was all.

Q. Did he say anything? A. He thought it strange that Mrs. Tilton should have imparted such information to her husband. He said that.

Q. I now show you "Exhibit No. 1," which was put in evi-



dence yesterday, and ask whether that was read at the same time of the reading of the last letter which was handed to you [handing witness "Exhibit No. 1"]? A. It was.

Q. "Exhibit No. 1," you say, was read to him at the same time of reading the last letter? A. The letter which I just saw was read to him, if that is "Exhibit No. 1."

Q. It is.

Mr. Evarts—What is that?

MRS. TILTON WANTS THE CONTRADICTORY LETTERS DESTROYED.

Mr. Fullerton—

SATURDAY MORNING.

MY DEAR FRIEND FRANK: I want you to do me the greatest possible favor. My letter which you have and the one I gave Mr. Beecher at his dictation last evening, ought both to be destroyed. Please bring both to me and I will burn them. Show this note to Theodore and Mr. Beecher; they will see the propriety of this request. Yours truly, E. R. TILTON.

Q. Your attention was called yesterday, at the close of your examination, to the interview with Mr. Beecher at your house some time in January, 1871; was there another meeting of the same parties at your house during that month? A. I do not remember, Sir, just at the present moment; I think there were several; I think there were two meetings in that month between them.

Q. Are you able now to state what occurred at the next one in order; I refer to one particularly when Mr. Beecher brought some letters and delivered them to you? A. There was—I will try and recall the date; I think about January 27.

Q. Of 1871? A. Yes, Sir.

Q. What occurred then? A. There was a consultation between Mr. Beecher and Mr. Tilton and myself with regard to a letter of Mrs. Morse, which Mrs. Morse had sent to Mr. Beecher; it was after January the 27th.

Q. Where was that meeting? A. It was at my house, Sir, in Clinton-st.

Q. And how was it brought about? A. Brought about by a statement in the letter itself. The letter was brought to me first by Mr. Beecher, and it contained a statement that Theodore had—

Mr. Evarts—No matter. It will speak for itself.

Q. If in consequence of anything—? A. In consequence of a statement in the letter, I thought it was necessary to have Mr. Beecher see Mr. Tilton, and they did meet, and the statement of the letter—the statement that the letter contained—was read to Mr. Tilton, and he indignantly denied—

Mr. Evarts—What took place?

Mr. Fullerton—He is telling what took place.

Mr. Evarts—No.

Mr. Fullerton—He certainly is.

Judge Neilson—Omit the word "indignantly."

Mr. Fullerton—I don't think the statement was read to Mr. Tilton when he was not there.

The Witness—Mr. Tilton denied the statement that the letter contained.

Q. Was this while Mr. Beecher was there? A. Yes, Sir.

Mr. Evarts—Now, if your Honor please, if he is speaking of that interview, we are entitled to have a statement of what each party said.

Mr. Fullerton—It is not worth while, Mr. Evarts, to take that, because I am going to give it. It is my branch of the case.

Mr. Evarts—I understand it. It is a part that is not your branch of the case that I do not like.

Mr. Fullerton—I can't help whether you like it or not. I shall give it in evidence if I am permitted.

Mr. Evarts—I want the rules of evidence to be observed, and whatever the matter of evidence shall be I will not interrupt.

Judge Neilson—Now, the conversation when Mr. Tilton and Mr. Beecher were both present the plaintiffs can give.

Mr. Evarts—I want it given as a conversation, and not characterized by the witness.

Mr. Fullerton—It has not been characterized by the witness at all.

Judge Neilson—Yes; by the word "indignant."

Mr. Fullerton—Yes, Sir; that he has a right to use under the authorities.

Judge Neilson—Let him give the conversation first.

Mr. Evarts—Yes, Sir.

Mr. Beach—Let us see if we are in error, Sir.

Judge Neilson—I don't think you are.

#### MR. BEACH OBJECTS TO REFLECTIONS ON MOULTON

Mr. Beach—Well, if your Honor please, these interruptions, these reflections upon the propriety and accuracy of the statements made by the witness, and our examinations, may, perhaps, have an unfortunate influence, and I do not wish any such impression to be entertained. The witness stated that there was a letter produced, that an extract was read from that letter in the presence of Tilton and Beecher, and this witness, and that Mr. Tilton denied the truth of that extract. Now, does your Honor hold that that is not competent and regular evidence?

Judge Neilson—Oh! no.

Mr. Beach—Very well, Sir.

Judge Neilson—The primary duty, of course, is to give the conversation. It naturally may appear, and perhaps should appear, whether it was a gentle, friendly conversation, or otherwise.

Mr. Beach—Undoubtedly, Sir. We intend to give all that conversation; but that fact, Sir, that a paragraph was read from that letter, and was denied by Mr. Tilton, is competent to be given in evidence.

Judge Neilson—I do not think that was objected to.

Mr. Beach—Yes, Sir; it was objected to.

Mr. Evarts—We will see, if your Honor please. It is perfectly competent for them to say: "This extract which I now read was read to Mr. Tilton, and he denied it." It is not competent to say that an unnamed extract of the letter was read, and he denied it. What occurred in the actual collision of minds between these parties is to be spread before the jury as it occurred; and the occurrence was not the reading of an unnamed part of a letter, but the reading of an actual part of a letter, and which we want now read, and then we will see what Mr. Tilton said about it.

Judge Neilson—It is a question then as to the order of proof. There is really no disagreement between you.

Mr. Evarts—There is no disagreement that the occurrence between the parties is to be given.

Judge Neilson—Yes.

Mr. Evarts—And it is no answer, when I object to their giving something that is short of and different from that, that they intend afterwards to give what they have a right to give.

Judge Neilson—Well, the extracts denied may come in.

Mr. Fullerton—Certainly, but I cannot put them all in evidence at once.

Mr. Evarts—Well, we have heard that a great many times.

Mr. Fullerton—You will hear it a great many times more.

Mr. Evarts—I presume we shall.

Mr. Fullerton—Your interruptions will not deter me from giving my evidence.

Mr. Evarts—I am afraid not.

Mr. Fullerton—I have given now what took place between the parties, and my friend on the other side knows full well that I intend to give the whole letter in evidence and call his attention to the extracts.

Mr. Evarts—Why didn't you do it at first?

Mr. Fullerton—Because I didn't choose to. I will select my own way of giving evidence, provided I am within the rules of evidence.

Mr. Evarts—But you are not.

Mr. Fullerton—If my evidence will have more force by being put in in my particular order I do not mean to be deterred from doing it in my own way. [Laughter.]

Judge Neilson—I want to say a word to the audience. There seems to be a little disposition to interrupt the proceedings this morning. I don't think it is called for. I think the reporters set the example. They had better not.

Mr. Fullerton—See whether the paper I now hand you is the paper to which you refer. [Handing witness a letter.] A. That is the letter, Sir.

#### ARGUMENT ON THE ADMISSION OF THE MORSE LETTER.

Mr. Evarts—If your Honor please, this is a letter—I take it for granted that it is in the handwriting of Mrs. Morse—this is a letter from Mrs. Morse, the mother of Mrs. Tilton, to Mr. Beecher, which, as I understand it, was brought by Mr. Beecher, and was presented at this interview, and some portion of it was read to Mr. Tilton. That is the point of the present examination. Now this letter of Mrs. Morse's is not evidence against Mr. Beecher. That, I take it, we understand; but so far as it furnishes a part of the interview between the parties, why, it forms a part of what is evidence—that is, what passed between Mr. Tilton and Mr. Beecher—and I do not understand that it is now offered in any other way.

Mr. Fullerton—Well, I offer it in evidence to be used for any purpose. It is proper when it is in—

Judge Neilson—It can only be proper if it was talked of in that interview and conversation. In and of itself it is not evidence.

Mr. Fullerton—It is quite impossible, if your Honor please,

for me to see the propriety of this letter without referring to its contents. I will state in general terms, however, that it refers to this difficulty between these parties, and consequently becomes a part of the *res gesta*.

Mr. Evarts—We agree that it is pertinent.

Mr. Fullerton—Well, I agree that you will not interrupt me. I am talking. It becomes important, therefore, as being a production of Mrs. Morse, sent to Mr. Beecher, referring to this difficulty, the letter having been handed by him to Mr. Moulton, and the conversation which ensued, and which I shall proceed to give in evidence, shows the propriety of introducing the whole letter in evidence in this case.

Judge Neilson—I think when your examination closes we can reconsider the question.

Mr. Evarts—Yes. I reserve my point, if your Honor please.

Judge Neilson—Certainly.

#### MRS. MORSE MAKES TROUBLE.

Mr. Fullerton—In the first place, then, Mr. Moulton, I will ask you to point out to me that part of the letter. A. The whole of the letter was read, you understand.

Q. I understand the whole of the letter was read, but point out that paragraph in the letter which made it necessary in your judgment, as you state, to send for Mr. Tilton, in order that his attention might be called to it.

Judge Neilson—Or rather which Mr. Tilton denied.

Mr. Fullerton—Well, Sir, it is the same thing.

Mr. Evarts—The part that was read?

Mr. Fullerton—He did not deny anything that was not read to him.

The Witness—You wish me to mark it, Sir, or read it?

Q. Just mark it, so that I can read it in evidence. A. [Marking the letter] Between the first two marks there.

Q. Have you now marked that paragraph in red. A. I have.

Mr. Evarts—I will look at it.

Mr. Fullerton—Yes, Sir [handing the letter to Mr. Evarts].

Q. I want you to state all the conversation that occurred between you and Mr. Beecher before you sent for Mr. Tilton, and also that which occurred after Mr. Tilton arrived there? A. Mr. Beecher brought me that letter from Mrs. Morse, and he said to me, "Here is a letter from Mrs. Morse which I would like to have you read," and I read it, and read the statement which I have marked, as well as the balance of the letter, and I said to Mr. Beecher, "I am sure that this cannot be true; in my own mind I am sure it cannot be true."

Q. What did you refer to then? A. The letter, or statement, with regard to Theodore Tilton.

Q. The statement that you have marked? A. Yes, Sir; I said, "There is a sentence in the letter which I know to be untrue; it contains an untrue statement, and I judge that the statement with regard to Mr. Tilton is quite as untruthful as that; but we can see Theodore, and find out from him directly; if he has done that he has done wrong," and I sent for Theodore, either that day or at some subsequent day; at all events, he came to an interview between Mr. Beecher and myself, and he did there deny—

Mr. Evarts—Well!



The Witness—He said, "Pardon me."

Q. He there made the denial that you referred to? A. Yes, Sir; he said it was not true that he had told twelve persons, and he said who he had told.

Mr. Evarts—They have not read the letter yet.

The Witness—I beg pardon!

Mr. Fullerton—It is proper for him to state that, whether it was read or not.

Mr. Evarts—I think not.

Q. What did Mr. Tilton say? A. He said he had not told twelve persons, and he told Mr. Beecher who he did tell—who he had told.

Mr. Fullerton—I read the extract marked, "I know of twelve persons whom he was told." Now, your Honor will perceive that without the context that has no meaning.

Mr. Evarts—Well, read the rest.

Mr. Fullerton—That Mr. Tilton could not deny but it was all read.

Mr. Evarts—Well, why didn't he mark it?

Mr. Fullerton—That was marked in the first instance.

Mr. Evarts—If your Honor please, what we would like to have is, distinctly, the passage of this letter that was read to Mr. Tilton and that he denied.

Mr. Fullerton—I have read it.

Judge Neilson—I understand that is the passage just read. Then we have the conversation and you have the clause.

Mr. Fullerton—Yes, Sir; and I have read the clause in evidence.

Mr. Evarts—But, I do not understand; I have not heard the witness say that was the clause.

Judge Neilson [to the witness]—The clause which was read—is that the one marked, and that you say was denied? A. Yes, Sir.

Mr. Evarts—If the witness will take the letter and read what was denied, then we shall know.

Judge Neilson—Very well; pass the witness the letter. [Letter handed to witness.]

The Witness [reading]—

"I know the publicity that was given to this recent and most crushing of all troubles is what has taken the life out of her. I know twelve persons whom he has told."

That—"I know of twelve persons whom he has told"—was the statement which Mr. Tilton denied.

Mr. Evarts—That is all that was said? A. The whole of the letter was read.

Mr. Evarts—Your Honor understands us to say distinctly that we are entitled to the passage of the letter that was read to Mr. Tilton before he denied it.

Judge Neilson—Well, you have the denial, and you have the clause of the letter; you have them taken together.

Mr. Evarts—Yes, Sir. Now, I have not the clause of the letter yet.

Mr. Fullerton—Well, that's not my fault.

Judge Neilson—I understood the witness to read the clause in question.

Mr. Evarts—I have not so understood it. He says that is the

clause that he denied; I want the clause that was read to him before he made his denial,

Mr. Fullerton—He has stated that that is the clause that he read to him, and the clause which he denied.

Judge Neilson [to the witness]—Now, restate that, so that we may understand you perfectly. A. If you will give me the letter again.

Mr. Evarts—We want what was read before his denial.

The Witness—The whole letter was read before his denial; the specific allegation of the letter that he denied was, "I know of twelve persons whom he has told."

Mr. Fullerton—Now, in making that denial what did he say? A. He told Mr. Beecher that it was not true; said that it was not true that he had told twelve persons, and he mentioned to Mr. Beecher the names of the parties whom he had told, and I remember that Oliver Johnson's name was one mentioned.

Q. Any one else? A. I think Mrs. Bradshaw.

Q. Any one else? A. Don't remember, Sir.

Q. What other conversation was had at that time? A. Mr. Tilton said to Mr. Beecher that Mrs. Morse was a dangerous woman—a woman liable to come down to Plymouth Church at any time and denounce his relations with her daughter, and that that letter ought to be carefully answered; the answer ought to be well considered, and that it ought to be kind—kind as it could possibly be made; and the answer was written by Mr. Beecher and submitted to Mr. Tilton, at that interview, I think—at all events, it was submitted to Mr. Tilton and to me.

Q. Anything else occur? A. Not that I remember particularly.

Mr. Fullerton—I now offer the letter in evidence.

Mr. Evarts—We object to it as evidence against Mr. Beecher otherwise than as it formed part of this interview.

Judge Neilson—Why, isn't that so, Mr. Fullerton?

Mr. Fullerton—Why, Sir, we hold that the bringing of that letter to Mr. Moulton, and sending for Mr. Tilton, and the conversation which followed, render the letter evidence in the cause as a part of the *res gestæ*. I want to go on and prove that there was no denial of the allegations in that letter.

Judge Neilson—Well, why don't you go through with that proof before you offer it?

Mr. Fullerton—I am through.

Judge Neilson—Nothing that Mrs. Morse could write would be evidence in this case, of course. The question is whether what occurred at this interview was sufficient to make it evidence. It is so as to the clause in question. I think that is the extent of it.

Mr. Fullerton—I will take a further question. [To the witness.] In that conversation was there a denial by Mr. Beecher of any of the allegations in that letter? A. No, Sir; there was no denial.

### LEGAL QUIBBLING.

Mr. Evarts—I object to that form of asking.

Judge Neilson—We will take it.

Mr. Evarts—"What took place?" should be the question.

Mr. Fullerton—Well, that is the question.

Mr. Evarts—If he said anything about the letter, or anything was said to him about the letter, we have a right to it.

Judge Neilson—Yes; it ought to be given.

Mr. Fullerton—What reply, if any, did Mr. Beecher make to the suggestion of Mr. Tilton or yourself that Mrs. Morse was a dangerous person—that this letter ought to be answered kindly? A. He agreed with it.

Q. What did he say? A. He said that he knew Mrs. Morse was a dangerous woman; he had told me so before.

Q. He had told you so before? A. Yes, Sir.

Q. In one of your interviews with him? A. Yes, Sir.

Q. Subsequent to the 30th of December, 1870? A. I don't remember; I think not, Sir—yes, subsequent to the 30th.

Mr. Fullerton—I think if your Honor will read this letter you will see that it is evidence in this cause.

Mr. Beach—I don't suppose, Sir, the question arises here, as to the extent or effect of this paper as evidence. That it is made evidence in the cause by the testimony of the witness seems to me perfectly clear. Mr. Beecher brings this paper to Mr. Moulton, consults with him about it; Mr. Tilton is called in to the consultation; Mr. Beecher, through Mr. Moulton, submits this letter to the consultation of Mr. Tilton; they confer about it, about all its terms and statements; they consult as to the proper mode of answering—prepare and agree upon an answer. Can there be any doubt, Sir, that that is, so far, an adoption of the letter; a part of the transaction in which these parties were then engaged as to render it admissible in evidence for the purpose of explaining their acts and declarations—submitting to the Court and jury the subject matter of that interview under the consultation then had between them? It is true, Sir, that the statements of Mrs. Morse, uncorroborated and unadopted either by the specific admission or by the equally clear and conclusive acts of Mr. Beecher, would not be evidence against him; but he brings this paper, submits all that it contains to the consideration of the two parties who were engaged in consultation with him; and, without a word of dissent or denial, adopts it *in toto*, and prepares an answer which I suppose we may submit to your Honor. Now, that is one transaction in regard to one subject matter, closely linking with the issue between these parties—bearing directly upon the subject matter of the controversy between them. Suppose, Sir, that instead of the written letter, Mrs. Morse had been present at that interview and made these declarations in the presence of Mr. Beecher, and he heard them, without a word of denial; and he then made an answer, such as is contained in the responsive letter which he wrote to Mr. Morse; would there be any doubt, if Mrs. Morse had been there speaking, instead of writing, that everything she said to Mr. Beecher bearing upon the subject matter of this controversy would be competent in evidence?

Judge Neilson—No doubt of it, at all.

Mr. Beach—Well, Sir, this is precisely the same.

Judge Neilson—Not quite. Besides, the responsive letter you speak of is not before us yet.

Mr. Beach—Ah! your Honor, but the statements in the letter are produced by Mr. Beecher, read in his presence, and submitted to the Court. Suppose, Sir, that that letter

had contained an allegation against Mr. Beecher that he had had sexual intercourse with the wife of Mr. Tilton, and he does not deny it; isn't that statement evidence, Sir? And upon what principle of law would it be excluded, if a party hear an allegation to his prejudice in regard to a matter in controversy in Court and fails to resist the allegation, is it to be said that it is not competent evidence against him? Isn't it a clear and unequivocal admission? Silence, Sir, under such circumstances is confession. Silence is an adoption of the allegation made when the party is called upon by every interest due to him to speak. And that is just the condition, Sir, of this evidence. I assume for the moment, Sir, that in that letter there is a clear imputation of guilt as against Mr. Beecher? If that be so, and under the evidence of the witness, he failed to deny or explain, submitted silently to that imputation, is it to be said that that is not evidence? And does it make any difference that the charge is presented against him in the form of a writing and recorded, instead of a parol accusation? Surely no distinction in principle can be drawn from the two examples. And it is upon that theory, Sir, that in this letter are contained material statements by Mrs. Morse, which, if untrue, it was for the interest of Mr. Beecher then to deny and to resent, and if he failed to do it the law implies an acknowledgment of its truth. At any rate, it is a question, Sir, to be submitted to the jury under all the circumstances of the event. And I am told, Sir, and, if your Honor will be kind enough to send for the authority if you are in any doubt about it, the case of the People against Kelly, in the 55th of New York, is said to be an analogous case.

Judge Neilson—I can well understand the principle that you invoke; I can well understand that if Mrs. Morse were present at the speaking, and made such a charge in the conversation, it would be the defendant's interest to deny it.

Mr. Beach—Then it seems to me that, your Honor, that you concede the principle.

Mr. Evarts—I have not been heard yet.

Mr. Beach—Well, I haven't perceived that you failed to take abundant opportunity to be heard. I was suggesting to his Honor that if he conceded that Mr. Beecher would be called upon to answer a parol declaration in regard to a matter material to himself, that no distinction can be drawn as between a parol and a written statement or accusation. I am entirely at a loss to see the discrimination in principle between the two examples.

The reason of the rule is that a matter is brought to the attention of a party interested which demands from him an answer under circumstances calling upon him either to assent to or to deny the truth of that matter. Well, Sir, this was presented to Mr. Beecher under circumstances which certainly called upon him for an explanation or denial, if any of the allegations contained in the letter of Mrs. Morse were untrue. It was a matter, Sir, of common interest to the parties then assembled—two of them at least. It was a matter about which they were consulting. It was a matter about which they mutually devised an answer; and if Mr. Beecher failed upon that occasion to make any proper explanation or denial, or if he did qualify or affect, by anything which he said upon that occasion, any of the declarations in that letter—why, of course, they must be



evidence; and, with the letter and the explanation or denial, they must be evidence, either in his favor or against him.

Judge Neilson—The obligation to make, on the spot, an oral denial or explanation is perhaps quite modified by the general purpose of making a written answer, the conference being had, about the spirit and tone and care with which that answer should be framed; and I learn from the argument, generally, that some answer was made.

Mr. Beach—Yes, Sir.

Judge Neilson—And when you purpose to make a written answer to a letter, I think it supersedes in a great degree the duty of making a present answer orally.

Mr. Beach—Well, Sir, we propose to give the answer; cannot give them, as my associate says, both at once.

Mr. Evarts—My objection was not such as to preclude the letter. I simply said that the letter was not evidence against Mr. Beecher, except so far as it was made evidence by what occurred with him in regard to it.

Mr. Beach—Well, I agree to that.

Mr. Evarts—That's all I said.

Mr. Beach—The difficulty is, that the Court went much further.

Mr. Fullerton—I will read it in evidence then.

Mr. Evarts—Your Honor then notes that it is admitted only for that purpose.

Mr. Fullerton [reading]:

MRS. MORSE'S LETTER TO BEECHER.

To MR. BEECHER: As you have not seen fit to pay any attention to the request I left at your house, now over two weeks since, I will take this method to inform you of the state of things in Livingston street. The remark you made to me at your own door was an enigma at the time, and every day adds to the mystery. "Mrs. Beecher has adopted the child." "What child?" I asked. You replied, "Elizabeth."

Now, I ask, what earthly sense was there in that remark? Neither Mrs. Beecher, yourself, nor I can, or have, done anything to ameliorate her condition. She has been for the last three weeks with one very indifferent girl. T. has sent Bessie, with the others, away, leaving my sick and distracted child to care for all four children night and day, without fire in the furnace, or anything like comfort or nourishment in the house. She has not seen any one. He says: "She is mourning for her sin." If this be so, one twenty-four hours under his shot, I think, is enough to atone for a lifelong sin, however heinous. I know that any change in his affairs would bring more trouble upon her, and more suffering. I did not think for a moment when I asked Mrs. B. as to you: call there, supposing she knew it, of course, as she said you would not go there without her.

I was innocent of making any misunderstanding if there was any; you say, keep quiet. I have all through her married life done so, and we now see our error. It has brought him to destruction, made me utterly miserable, turned me from a comfortable home, and brought his own family to beggary. I don't believe if his honest debts were paid he would have enough to buy their breakfast. This she could endure and thrive under, but the publicity he has given to this recent and most crushing of all trouble is what is taking the life out of her. I know of twelve persons whom he has told, and they in turn have told others. I had thought we had as much as we could live under from his neglect and ungovernable temper. But this is the death-blow to us both, and I doubt not Florence has hers. Do you know when I hear of your cracking your jokes from Sunday to Sunday, and think of the misery you have brought upon us, I think with the

Psalmist, "There is no God." Admitting all he says to be the invention of his half drunken brain, still the effect upon us is the same, for all he has told believe it. Now he has nothing to do, he makes a target of her night and day. I am driven to this extremity: to pray for her release from all suffering by God's taking her to himself, for if there's a heaven I know she'll go there.

The last time she was in this house she said: "Here I feel I have no home, but on the other side I know she would be more than welcome." Oh! my precious child! How my heart bleeds over you in thinking of your sufferings. Can you do anything in the matter?

Must she live in this suffering condition of mind and body with no alleviation? You or anyone else who advises her to live with him, when he is doing all he can to kill her by slow torture, is anything but a friend.

I don't know if you can understand the sentence I've written, but I'm relieved somewhat by writing. The children are kept from me, and I haven't seen my darling child but once since her return from this house.

I thought the least you could do was to put your name to the paper to help to reinstate my brother. Elizabeth was as disappointed as myself. He is still without employment, with a sick wife and five children to feed; behind with the rent, and everything else behind hand.

If your wife has adopted Lib, or you sympathize with her, I pray you to do something for our relief before it is too late. He swears, so soon as the breath leaves her body he will make this whole thing public; and this prospect, I think, is one thing which keeps her alive. I know of no other. She's without nourishment for one in her state; and in want—actual want. They would both deny it, no doubt; but it's true.

THE SCENES CONNECTED WITH THE MORSE LETTER.

Mr. Fullerton—Now, is that all of the letter—I see there is no signature to it? A. All that I had of it, Sir.

Q. It is all Mr. Beecher brought to you? A. I believe it to be all that he brought; yes, Sir.

Q. Now, was there any other or further conversation at that time in reference to the contents of this letter? A. Yes, Sir; I said to Mr. Beecher, when he brought me the letter—at the time that he brought me the letter—that I knew that the allegation with regard to their being in want was untrue; I said to him, "I know that Mr. Tilton has a balance with our firm."

Q. Mr. Evarts—This is not the interview with Mr. Tilton? A. No; the interview with Mr. Beecher; Mr. Beecher said it was useless for him to undertake to live if this story was going from mouth to mouth, and he wanted to be satisfied—he said he wanted to be satisfied that Mr. Tilton had not stated, as that letter says he did, the fact to twelve persons, and I tried to comfort him—and I said to him: "Mr. Beecher, you may rest assured that it is untrue; I know that Mr. Tilton would not do it. I know that he has told me to whom he has told the story, and that is all there is of it, and you need not be anxious about it, in my opinion." And then I sent for Mr. Tilton—it was either that day or a day or two afterwards; at all events, he came—

Mr. Fullerton—Well, at the meeting between yourself, Mr. Tilton and Mr. Beecher, what else was said in regard to the contents of this letter—in regard to the charge brought by Mrs. Morse, if any? A. There was nothing said about the charges brought by Mrs. Morse.

Q. What conversation was there? A. Mr. Tilton said that

he certainly had not said that to twelve persons—not mentioned the fact to twelve persons.

Q. And then he went on and stated to whom he had told the story? A. Yes, Sir.

Q. And you have mentioned the names of two persons? A. Two parties; yes, Sir.

Q. Do you recollect whether he named any other person to whom he had told it? A. I do not remember now.

Q. And what did Mr. Beecher say when he was informed that it had been communicated to Mr. Robinson and Mrs. Bradshaw; what did Mr. Beecher reply when he was informed of the names of the two persons to whom Mr. Tilton said he had communicated this story? A. I do not remember his reply, sir; it was an expression of regret that it had been told to anybody.

Q. Who is Oliver Johnson? A. Oliver Johnson is now one of the editors of *The Christian Union*.

Q. What was his position at that time? A. At that time, I think that he had resigned *The Independent*; he had been one of the editors of *The Independent*, managing editor of *The Independent*; at the time that Mr. Tilton told Mr. Beecher that he had told Oliver Johnson, Oliver Johnson was on *The Independent*.

Q. And Mrs. Bradshaw, who was named, did she reside in Brooklyn? A. She did; yes, Sir.

Q. In that conversation was anything said by Mr. Tilton with reference to the charges of neglect to his family? A. Yes, Sir.

Q. What was said upon that subject? A. Mr. Tilton denied that he had neglected his family.

Mr. Evarts—What was said to him and what did he say? A. Well, Sir, as nearly as I could remember his words, he said that he had not neglected his family; that his family were not in want; and he said to Mr. Beecher, I remember, "You know that they are not"—turning to me, "You know that I am not in want."

Q. Meaning you? A. Yes, Sir.

Mr. Fullerton—I have understood you to say that at that time another letter was produced there by Mr. Beecher? A. There was a letter, Sir, produced, I think, at that interview.

Q. What letter was that? A. I do not remember, Sir, distinctly enough about that letter to speak of it.

Q. Look at the letter.

Q. [Handing letter to witness.] Look at the paper I now show you and say whether it is the reply to the letter of Mrs. Morse to Mr. Beecher? A. Yes, Sir.

Q. In whose handwriting is it? A. Mr. Beecher's.

Q. Is that the original draft? A. Yes, Sir.

Q. As amended? A. Yes, Sir.

Q. When was that prepared—at that time—that meeting? A. At that time; yes, Sir.

Q. While you were together? A. I believe so; yes, Sir.

Mr. Fullerton—I offer it in evidence.

BEECHER REPLIES TO MRS. MORSE.

Mrs. Judge Morse:

MY DEAR MADAM: I should be very sorry to have you think I have no interest in your trouble. My course towards you hitherto should satisfy you that I have sympathized with your distress. But Mrs. Beecher and I, after full consideration.

are of one mind—that, under present circumstances, the greatest kindness to you and to all will be, in so far as we are concerned, to leave to time the rectification of all the wrongs, whether they be real or imaginary.

Mr. Evarts—Is that the draft?

Mr. Fullerton—That is the original draft as amended.

(Letter marked "Exhibit No. 8.")

The Witness—I remember at that interview Mr. Tilton specifically said to Mr. Beecher, "it will be necessary in writing that letter to so write it that if it should be lost, or come into anybody else's possession, it would not disclose the fact of any sin on your part."

Q. I understand you to say that this occurred about the last of January, 1871? A. Yes, Sir; somewhere about that time. My recollection is that the letter was brought to me, and that then some time elapsed between that and the interview.

Q. The interview between the three? A. Yes, Sir.

Q. When did you next see Mr. Beecher? A. I don't remember when I next saw him, I saw him so frequently.

Q. I call your attention to February 7, 1871. Did anything occur on that day? I refer to the day when three letters were written? A. I received a letter from Mr. Beecher on February 7; I had an interview with him before February 7.

Q. State what took place before February 7, intermediate to this last interview when the Morse letters were produced on February 7, state what occurred between you and Mr. Beecher. A. Mr. Beecher said that he wanted to be satisfied of Theodore's spirit towards him; that he was in a state of uncertainty about it, and I said to him, "I want to have Tilton in writing on this question; I want him to commit himself somewhere;" and I had, even anterior to the 27th of January, spoken to Mr. Tilton about it.

Mr. Beach [to the witness]—Unless you told that to Mr. Beecher you need not state it. A. Yes, Sir; I said to him, "I have repeatedly asked Theodore to give me a paper stating what his views were. Mr. Beecher said he would like that, too, and that explains the letter of February 7 of Theodore Tilton to me. That is what I remember about that letter.

Mr. Fullerton—Is that the letter which he wrote to you and of which you have last spoken? A. Yes, Sir; that is it, and just previous to February 7 I had a conversation with Mr. Beecher I don't remember the date, with regard to the necessity of having matters go on properly at Livingston-st., and Mr. Beecher said, "I think that as Elizabeth is not admitted to consultations, inasmuch as she does not hear from us directly, that she ought to be assured that the spirit of Theodore toward her is kind," and he said, "But I will write a letter to Elizabeth placing the situation before her." That is the substance of the conversation which led to the letter of February 7 by Mr. Beecher to Mrs. Tilton.

Q. This letter written to you by Mr. Tilton on the 7th of February—did you show it to Mr. Beecher? A. Yes, Sir.

Q. When was it shown to him? A. Shortly after; about as soon as I received it; I don't remember the date.

Mr. Fullerton—I offer it in evidence.

TILTON BEARS BEECHER NO ENMITY.

BROOKLYN, February 7, 1871.

MY VERY DEAR FRIEND: In several conversations with me



you have asked about my feelings towards Mr. Beecher, and yesterday you said the time had come when you would like to receive from me an expression of them in writing. I say, therefore, very cheerfully, that notwithstanding the great suffering which he has caused to Elizabeth and myself, I bear him no malice, shall do him no wrong, shall discountenance every project by whomsoever proposed for any exposure of his secret to the public, and, if I know myself at all, shall endeavor to act toward Mr. Beecher as I would have him, in similar circumstances, act toward me. I ought to add that your own good offices in this case have led me to a higher moral feeling than I might otherwise have reached. Ever yours affectionately,

THEODORE TILTON.

To FRANK MOULTON.

(Letter marked "Exhibit No. 9.")

You have spoken of a letter written to you by Mrs. Beecher on that same 7th of February, 1871. [Handing letter to witness.] Please look at that and say whether it is the letter referred to by you? A. Yes, Sir; that is the letter.

Mr. Evarts—There is no date to this letter.

Mr. Fullerton—No; I offer it in evidence, and read it.

BEECHER'S TESTIMONY TO MOULTON'S FRIENDSHIP.

FEBRUARY 7, 1871.

MY DEAR MR. MOULTON: I am glad to send you a book which you will relish, or which a man on a sick bed *ought* to relish. I wish I had more like it, and that I could send you one every day, not as a repayment of your great kindness to me, for that can never be repaid—not even by love, which I give you freely.

Many, many friends has God raised up to me, but to no one of them has he ever given the opportunity and the wisdom so to serve me as you have. My trust in you is implicit. You have also proved yourself Theodore's friend and Elizabeth's. Does God look down from Heaven on three unhappy creatures that more need a friend than these?

Is it not an intimation of God's intent of mercy to all, that each one of these has in you a tried and proved friend? But only in you are we three united. Would to God, who orders all hearts, that by your kind mediation, Theodore, Elizabeth and I, could be made friends again. Theodore will have the hardest task in such a case; but has he not proved himself capable of the noblest things?

I wonder if Elizabeth knows how generously he has carried himself towards me? Of course, I can never speak with her again, except with his permission, and I do not know that even then it would be best. My earnest longing is to see her in the full sympathy of her nature at rest in him, and to see him once more trusting her, and loving her with even a better than the old love. I am always sad in such thoughts. Is there any way out of this night? May not a day star arise?

Truly yours always, with trust and love,

(Signed)

HENRY WARD BEECHER.

(Letter marked "Exhibit No. 10.")

Q. You have also spoken of a letter written on that same day by Mr. Beecher to Mrs. Tilton. [Handing letter to witness.] Look at the paper now handed to you and say whether that is the letter that he wrote on that day to that lady? A. That is the letter.

Q. That is the one, you say? A. That is the one.

Mr. Fullerton—I put in evidence the letter of February 7, from Mr. Beecher to Mrs. Tilton:

BEECHER TO MRS. TILTON.

BROOKLYN, February 7, 1871.

MY DEAR MRS. TILTON: When I saw you last I did not expect ever to see you again or to be alive many days. God was kinder to me than were my own thoughts. The friend whom God sent to me (Mr. Moulton) has proved, above all friends that ever I had, *more* willing to help me in this terrible emergency of

my life. His hand it was that tied up the storm that was ready to burst upon our head. I am not the less disposed to trust him from finding that he has your welfare most deeply and tenderly at heart. You have no friend (Theodore excepted) who has it in his power to serve you so vitally, and who will do it with so much delicacy and honor. I beseech of you, if my wishes have yet any influence, let my deliberate judgment in this matter weigh with you. It does my sore heart good to see in Mr. Moulton an unfeigned respect and honor for you. It would kill me if he thought otherwise. He will be as true a friend to your honor and happiness as a brother could be to a sister's. In him we have a common ground. You and I may meet in him. The past is ended. But is there is no future?—no wiser, higher, holier future? May not this friend stand as a priest in the new sanctuary of reconciliation, and mediate, and bless you, Theodore, and my most unhappy self? Do not let my earnestness fail of its end; you believe in my judgment. I have put myself wholly and gladly in Moulton's hands, and there I must meet you. This is sent with Theodore's consent, but he has not read it. *Will you return it to me by his hands?* I am very earnest in this wish for all our sakes, as such a letter ought not to be subject to even a chance of miscarriage.

Your unhappy friend,

(Signed)

H. W. BEECHER.

Q. What was said, if anything, to you with reference to a permission to write that letter? A. Mr. Beecher wanted me to get Theodore's permission to write it.

Q. And did you? A. I did; yes, Sir.

Q. And when you conveyed to Mr. Beecher the knowledge that Theodore had consented, what was said between you A. He said he would write the letter.

Q. How did it get into your possession, if it got there? A. It was sent to me by Mr. Beecher, or delivered to me personally by Mr. Beecher; I don't remember. Do you mean at first how did it get into my hands, or how last?

Q. How first you have answered? A. Yes, Sir; certainly.

Q. Now, Mr. Moulton, prior to that time, had anything been said about any intercourse between Mr. Beecher and Mr. Tilton or Mrs. Tilton, and how it was to be brought about, if at all? A. Oh! yes, Sir.

Q. State, if you please, what that was? A. Sir?

Q. What arrangement was made with Mr. Beecher, if any, upon that subject? A. The arrangement between Mr. Beecher and myself was this, that there was to be no interchange.

Mr. Evarts—State what took place.

Mr. Fullerton—Yes, state what took place.

The Witness—I told Mr. Beecher that I thought he had better not hold any correspondence with Mrs. Tilton without Theodore's consent, and he said he thought that would be right. That is what there was about that.

Q. When was that arrangement made? A. Some time anterior to February 7th, in the early part of the controversy.

Q. I asked you how you obtained that letter—from whom? How came it afterwards in your possession? A. It was returned by Theodore Tilton to me.

Q. Do you know whether Mrs. Tilton received it? A. I don't know; Theodore Tilton said he delivered it to her.

Q. What did you do with the letter? A. I gave it to Theodore Tilton.

Q. For delivery? A. For delivery.

Mr. Evarts—It was open, I suppose?

Mr. Fullerton—Sealed?

The Witness—It was an open letter.

(Letter marked "Exhibit No. 7.")

Q. I am requested to ask you when Mr. Tilton returned to you the letter addressed by Mr. Beecher to Mrs. Tilton? A. Shortly after the date of it.

Q. [Handing letter to witness.] Look at the paper now shown you, and say from whom you received it? A. From Mr. Beecher.

Q. When? A. After my return from the—after April the 15th some time; I think that was the date I returned from the South. It was after my return.

Q. You may state when you left for the South and when you returned from the South? A. I think the date of my departure was March 2d, 1871, and I returned April 15th.

Q. During that period, where were you? A. In Florida and Georgia—generally South.

Q. How long after your return was it that this letter now in your hand was given to you by Mr. Beecher? A. Not very long. I don't remember the date.

Q. What did he state when he gave it to you? A. He said he had received it from Elizabeth.

Q. Did you make any observation at the time? A. No, I don't remember that I did; I think I made an observation like this, that it was an act of good faith on his part to give it to me.

Mr. Fullerton—I offer the letter in evidence.

#### ONE OF THE CLANDESTINE LETTERS.

Wednesday.—MY DEAR FRIEND: Does your heart bound towards all as it used? So does mine! I am myself again. I did not dare to tell you until I was sure; but the bird has sung in my heart these four weeks, and he has covenanted with me never again to leave. "Spring has come." Because I thought it would gladden you to know this and not to trouble or embarrass you in any way, I now write. Of course I should like to share with you my joy, but can wait for the Beyond!

When dear Frank says I may once again go to old Plymouth, I will thank the dear Father.

Mr. Evarts—There is no date to that letter?

Mr. Fullerton—There is no date to it.

Mr. Fullerton—In whose handwriting is that letter? A. Elizabeth Tilton's.

Q. And do you observe there the words at the head of it, "Received March 8th?" A. Yes, Sir.

Q. In whose handwriting is that? A. Mr. Beecher's.

Q. Was that on the letter when he handed it to you? A. Yes, Sir.

Mr. Evarts—Is the letter signed?

Mr. Fullerton—The letter is not signed.

Mr. Evarts—If your Honor please, all these letters that we have seen are obviously letters that were contained in envelopes, as you can see by their shape that they are not complete sheets that were folded and addressed, and as yet no envelopes have been introduced. I call attention to it, and of course I would like to have the envelopes.

Mr. Morris—We have them.

Mr. Evarts—Well, we would like to have them.

Mr. Fullerton [handing envelope to witness]—Look at the envelope I now show you, and say in whose hand the superscription is written?

Q. [handing letter to witness]—Look at the letter I now show you, and say in whose handwriting it is? A. Mr. Beecher's.

Mr. Fullerton—I offer this in evidence. I read the letter.

Mr. Evarts—We understand this letter is now offered to be read as having been inclosed in that envelope.

Mr. Fullerton—I don't offer it as having been inclosed in that envelope now. I have proved the envelope to be in the handwriting of Mr. Beecher, and I have proved the letter to be in his handwriting also.

Judge Neilson—You didn't interrogate him as to the connection of the two papers.

Mr. Fullerton—No, sir: because he does not know.

Mr. Evarts—I asked for envelopes that accompanied the letters to the parties, and I want the envelopes and the letters to go together.

Mr. Fullerton—Whenever the time comes for me to prove that letter was sent in that envelope, I shall do so; I cannot do it with the present witness.

Mr. Evarts—You proposed it.

Mr. Fullerton—No; I proposed it so far as to put it in evidence, and have them marked for identification, so as to be ready to go a step further and put them in evidence.

Judge Neilson—On the assumption that you will connect them hereafter, it is proper.

Mr. Evarts—I want them connected.

Judge Neilson—On the assumption that you will do that it is proper.

Mr. Beach—If the gentleman wants them connected, let him connect them.

Mr. Evarts—You bring new papers and put them in the witness's hands. After I have asked for the envelopes and letters then you produce this letter and that envelope and put them in this witness's hands. I observe there is no such relation between the two papers as necessarily connects them, and then I ask you if you put them together as one letter, as they are, as I suppose, and I don't want you to separate them hereafter.

Mr. Fullerton—I don't propose to separate them hereafter.

Mr. Evarts—Then go on.

Mr. Fullerton—I will go on when it suits me to go on; I don't propose to take orders from you in that spirit. I think you have a little forgotten yourself to-day.

Mr. Evarts—Go on; I waive my objection.

Mr. Fullerton—Judge Neilson, I have proceeded, if your Honor please, in an orderly course. I put the envelope in the hands of the witness, and I proved the superscription to be in the handwriting of Mr. Beecher. I then proposed to have it marked for identification. I proved by the same witness a letter in the handwriting of Mr. Beecher, which I propose to read in evidence now, and if it subserve our purpose hereafter, and not without, we shall prove by another witness that that letter was in that envelope.

Judge Neilson—Meantime this envelope is marked for identification.

Mr. Fullerton—That is all we propose to do with it now, except either on our own motion or on the dictation of my adversary.



Judge Neilson—Council don't intend to dictate.

Mr. Fullerton—It looks very much like it [reading].

#### ANOTHER OF THE CLANDESTINE LETTERS.

The blessing of God rest upon you. Every spark of life and warmth in your own house will be a star and a sun in my dwelling. Your note broke like Spring upon Winter, and gave me an inward rebound to life. No one can ever know, none but God, through what a dreary wilderness I have wandered. There was Mt. Sinai, there was the barren sand, and there was the alternation of hope and despair that marked the pilgrimage of old. If only it might lead to the Promised Land—or, like Moses, shall I die on the border. Your hope and courage are like medicine. Should God inspire you to restore and rebuild at home, and while doing it to cheer and sustain outside of it another who sorely needs help in heart and spirit, it will prove a life so noble as few are able to live, and in another world the emancipated soul may utter thanks!

If it would be of comfort to you, now and then, to send me a letter of true inwardness—the outcome of your inner life—it would be safe, for I am now at home here with my sister; and it is permitted to you and will be an exceeding refreshment to me, for your heart experiences are often like bread from heaven to the hungry. God has enriched your moral nature. May not others partake?

Mr. Fullerton—That letter, if the Court please, is also without signature.

Q. Do you know anything of the writing of that letter? A. No, Sir.

Q. Your permission, then, was not obtained, nor so far as you know, was Theodore's obtained for the writing of that letter? A. No, Sir.

(Letter marked "Exhibit No. 13.")

Mr. Fullerton—I desire to have the envelope marked for identification.

(Envelope marked "No. 13" for identification.)

Q. [Handing paper to witness.] I now show you another paper and ask you whose handwriting it is? A. Elizabeth Tilton's.

Q. Did it come into your possession at any time? A. Yes, Sir. Did it what, Sir?

Q. Did it come to you in your possession? A. It came into my possession; yes, Sir.

Q. From whom did you receive it? A. From Mr. Beecher.

Mr. Fullerton—I offer the letter in evidence.

Mr. Evarts—If your Honor please, Mr. Fullerton suggests that the air is somewhat close here.

Judge Neilson—Will the officer open that window? Pull down the upper part further, please.

Mr. Fullerton—(Reading.)

MR. BEECHER: FRIDAY, April 21, 1871.

As Mr. Moulton has returned, will you not use your influence to have the papers in his possession destroyed? My heart bleeds night and day at the injustice of their existence

Mr. Fullerton—No signature.

Letter marked "Exhibit No. 14."

Q. [Handing letter to witness:] I hand you still another letter, and state to me, if you please, in whose handwriting it is? A. Elizabeth Tilton's.

Q. From whom did you receive it if any one? A. From Mr. Beecher.

Q. When? A. Does it bear date? I did not look to see whether it bore date.

Q. May 3d, 1871? A. About that time, Sir,

Mr. Fullerton—I offer it in evidence.

MR. BEECHER:

MAY 3, 1871.

My future either for life or death would be happier could I but feel that you forgave me while you forget me. In all the sad complications of the past years, my endeavor was entirely to keep from you all suffering, to bear myself alone, leaving you forever ignorant of it. My weapons were love, a larger untiring generosity and nest-hiding!

[To Mr. Shearman:] Nest-hiding is underscored, I believe, Mr. Shearman?

Mr. Shearman—Yes, Sir.

Mr. Fullerton—And an exclamation marked after it?

Mr. Shearman—Yes, Sir.

Mr. Fullerton—[Continuing the reading of the letter.]

"That I failed utterly, we both know, but I now ask forgiveness."

Letter marked "Exhibit No. 15."

Q. Do you remember, some time after the receipt of this letter that has been shown to you, of a poem that was published in *The Golden Age*, Theodore Tilton being the author? A. Yes, Sir.

Mr. Evarts—How is that relevant, if your Honor please—a poem by Mr. Tilton?

Mr. Fullerton—His Honor don't know as well as I do how it is relevant.

Mr. Evarts—Of course not.

Mr. Fullerton—Perhaps I had better tell I have not got to that point yet. I will state to your Honor, when it is proposed to be read, what the pertinency of it is.

Q. Do you recollect that poem? A. Very well, indeed, Sir.

Q. State what followed between you and Mr. Beecher, if anything, after the publication of that poem? A. I saw Mr. Beecher.

Q. Where? A. Walking over to New York with him—I had crossed from the Brooklyn shore with him.

Q. What did he say in regard to that poem? A. He said that he was very sorry that it had been published: that it almost broke his heart to read it; that he thought that Theodore Tilton ought not to have published it; that he considered it virtually a telling of the story of himself and Elizabeth. He said he thought it was indelicate for Theodore to have done it. I guess I said that, by the way, myself; yes, Sir, I said that.

Q. That it was indelicate? A. Yes, Sir; I said it.

Q. Was there anything said about it being a breach of the understanding about keeping the matter secret? A. No, Sir; not that I remember.

Mr. Fullerton—I now offer the poem in evidence.

Judge Neilson—Go on and read it.

#### THE SIGNIFICANT POEM.

Mr. Fullerton—It is entitled, "Sir Marmaduke's Musings. By Theodore Tilton; "

I won a noble fame,  
But, with a sudden frown,  
The people snatched my crown,  
And in the mire trod down  
My lofty name.

I bore a bounteous purse,  
And beggars by the way  
Then blessed me day by day,  
But I, grown poor as they,  
Have now their curse.

I gained what men called friends,  
But now their love is hate,  
And I have learned too late  
How mated minds unmate,  
And friendship ends.

I clasped a woman's breast,  
As if her heart I knew,  
Or fancied, would be true,  
Who proved—alas, she too !  
False like the rest.

I am now all bereft—  
As when some tower doth fall,  
With battlements and wall,  
And gate and bridge and all—  
And nothing left.

But I account it worth  
All pangs of fair Love crossed—  
All loves and honors lost—  
To gain the heavens, at cost  
Of losing earth.

So, lest I be inclined  
To render ill for ill,  
Henceforth in me instill,  
Oh ! God, a sweet good will  
To all mankind.

Sleepy Hollow, November 1st., 1871.

The poem was marked Exhibit No. 16.

Mr. Fullerton—If your Honor please, I could not finish another topic if I commenced it, and it would break the continuity of it. I, therefore, ask your Honor to adjourn.

Judge Nielson, to the Jury—Return to your places, Gentlemen, at 2 o'clock.

The Witness—May I "step down," your Honor?

Judge Nielson—Yes, sir.

Mr. Mallison—(the Clerk)—The Court will now take a recess until two o'clock.

### TILTON DROPPED BY THE CHURCH.

The Court met at 2 p. m., pursuant to adjournment.

FRANCIS D. MOULTON's direct examination was resumed.

Mr. Fullerton [handing witness a paper]—The paper being shown you, I ask whether you ever saw it before? A. Yes, Sir; I have seen it before.

Q. Where? A. It was sent to me by Mr. Beecher.

Q. In whose handwriting is it? A. Henry Ward Beecher's.

Q. Did you have any conversation at the time? A. About that time we had conversation; yes, Sir.

Q. Anything to which the letter may relate? A. Yes, Sir; with reference to dropping Theodore Tilton's name from the roll of the church.

Q. State what that conversation was, if it were prior to the writing of the letter in question. A. Mr. Beecher said he was exceedingly anxious that Mr. Tilton should take some action by which his name should be dropped from the roll—voluntary ac-

tion on his part. The conversation that I had with him on that subject was sometime prior to this note.

Mr. Fullerton—I offer it in evidence [handing the letter to defendant's counsel].

Q. In that conversation did Mr. Beecher give any reasons why he thought that course was advisable; if so, state what they were? A. Mr. Beecher said he thought it would save trouble in the Church if they were free from responsibility for him. He said that if he was no longer a member of the Church, why, then, they could not investigate him as a church. He said he thought there would not be any safety unless he did have his name dropped from the roll of the Church by letter, in keeping the scandal down—the facts in regard to Mr. Beecher and Mrs. Tilton.

Mr. Fullerton [reading the letter]—

THE LETTER EXPLAINING THE POLICY OF DROPPING TILTON'S NAME.

DECEMBER 3, 1871.

MY DEAR FRIEND: There are two or three who will feel anxious to press action on the case. It will only serve to raise profitless excitement where we need to have quieting.

There are already complexities enough. We do not want to run the risk of the complications which, in such a body, no man can foresee, and no one control. Once free from a sense of responsibility for *him*, and there would be a strong tendency for a kindly feeling to set in, which is now checked by the membership, without attendance, sympathy or doctrinal agreement. Since the connection is really formal and not vital or sympathetic, why should it continue with all the risk of provoking irritating measures. Every day's reflection satisfies me that this is the course of wisdom, and that T. will be the stronger and B. the weaker for it.

You said that you meant to effect it. Can't it be done promptly? If a letter is written it had better be very short, simply announcing withdrawal, and, perhaps, with an expression of kind wishes, &c.

You will know. I shall be in town Monday and part of Tuesday. Shall I hear from you?

Dec. 3, 1871.

(Letter marked "Exhibit No. 17.")

Q. What occurred after the writing of that letter, if anything? A. I think I met Mr. Beecher after the letter, and told him that I would try to effect his wishes in that matter with Theodore Tilton.

Q. Was anything done? A. I think that it was subsequent to the letter. Yes, sir; something was done. Theodore Tilton wrote a letter—I don't remember to whom, whether it was to the Trustees of the Church or not—but wrote a letter disavowing connection with it.

Mr. Evarts—No matter about the letter, it will speak for itself.

The Witness—Yes.

Q. There is still another letter, Mr. Moulton [handing witness a letter]. State whether you know anything of it? A. It is in Henry Ward Beecher's handwriting.

Q. The envelope also [handing witness the envelope]? A. Yes, sir; the envelope also.

Mr. Fullerton—I offer it in evidence.

THE WRITTEN PRAYER FOR MRS. TILTON.

20TH JANUARY, 1872.

Now may the God of peace that brought again from the dead our Lord Jesus, that great shepherd of the sheep, through the



blood of the everlasting covenant, make you perfect in every good work to do His will, working in you that which is well-pleasing in His sight, through Jesus Christ.

This is my prayer day and night. This world ceases to hold me as it did. I live in the thought and hope of the coming immortality, and seem to myself most of the time to be standing on the edge of the other life, wondering whether I may not at any hour hear the call to "Come up hither." I shall be in New Haven next week to begin my course of lectures to the theological class on preaching. My wife takes boat for Havana and Florida on Thursday. I called on Wednesday, but you were out. I hope you are growing stronger and happier. May the dear Lord and Savior abide with you. Very truly yours,

H. W. BEECHER.

(Letter marked "Exhibit No. 18.")

Mr. Fullerton—I also read on envelope:

Brooklyn, January 20, 8 P.M. New-York, Mrs. Elizabeth Tilton, Livingston-st., Brooklyn.

(Marked "Exhibit 18.")

Q. Still another letter, Mr. Moulton, and state in whose handwriting it is [handing witness a letter]. A. In the handwriting of Henry Ward Beecher.

Q. To whom was that letter written? A. Written to me.

Q. Did you receive it? A. I did.

Q. From him? A. Yes, Sir.

Mr. Fullerton—I offer it in evidence.

#### MR. BEECHER'S MELANCHOLY LETTER TO MOULTON.

MONDAY, February 5, 1872.

MY DEAR FRIEND: I leave town to-day and expect to pass through from Philadelphia to New-Haven. I shall not be here till Friday.

About two weeks ago I met T. in the cars going to B. He was kind. We talked much. At the end he told me to go on with my work without the least anxiety, in so far as his feelings and actions were the occasion of apprehension.

On returning home from New-Haven (where I am three days in the week, delivering a course of lectures to the theological students), I found a note from E. saying that T. felt hard towards me, and was going to see or write me before leaving for the West.

She kindly added, "Do not be cast down. I bear this almost always, but the God in whom we trust *will deliver us all safely*. I know you do and are willing abundantly to help him, and I also know your embarrassments." These were words of warning, but also of consolation, for I believe E. is beloved of God, and that her prayers for me are sooner heard than mine for myself or for her. But it seems that a change has come to T. since I saw him in the cars. Indeed, ever since he has felt more intensely the force of the feeling in society and the humiliations which environ his enterprise; he has growingly felt that I had a power to help which I did not develop, and I believe that you have participated in this feeling. It is natural you should. T. is dearer to you than I can be. He is with you. All his trials lie open to your eye daily. But I see you but seldom, and my personal relations, environments, necessities, limitations, dangers, and perplexities you cannot see or imagine. If I had not gone through this great year of sorrow, I would not have believed that anyone could pass through my experience, and be *alive or sane*. I have been the centre of three distinct circles, each one of which required clear-mindedness and peculiarly inventive or originaive powers, viz.:

1. The great church.
2. The newspaper.
3. The book.

The first I could neither get out of nor slight. The *sensitiveness* of so many of my people would have made any appearance of trouble or any remission of force an occasion of alarm and

notice, and have excited, when it was important that rumors should die and everything be quieted.

The newspaper I did roll off, doing but little except give general directions, and in so doing I was continually spurred and exhorted by those in interest. It could not be helped.

The "Life of Christ," long delayed, had locked up the capital of the firm, and was likely to sink them—finished it *must* be. Was ever book born of such sorrow as that was? The interior history of it will never be written.

During all this time you, literally, were all my *stay and comfort*. I should have fallen on the way but for the courage which you inspired and the hope which you breathed.

My vacation was profitable. I came back, hoping that the bitterness of death was passed. But T.'s troubles brought back the cloud, with even severer suffering. For all this Fall and Winter I have felt that you did not feel satisfied with me, and that I seemed, both to you and T., as contenting myself with a cautious or sluggish policy, willing to save myself but not to risk anything for T. I have again and again probed my heart to see whether I was truly liable to such feeling, and the response is unequivocal that I am not. No man can see the difficulties that environ me, unless he stands where I do.

To say that I have a church on my hands is simple enough—but to have the hundreds and thousands of men pressing me, each one with his keen suspicion, or anxiety, or zeal; to see tendencies which, if not stopped, would break out into ruinous defense of me; to stop them without seeming to do it; to prevent any one questioning me; to meet and allay prejudices against T. which had their beginning years before this; to keep serene, as if I was not alarmed or disturbed; to be cheerful at home and among friends when I was suffering the torments of the damned; to pass sleepless nights often, and yet to come up fresh and full for Sunday;—all this may be talked about, but the real thing cannot be understood from the outside, nor its wearing and grinding on the nervous system.

God knows that I have put more thought and judgment and earnest desire into my efforts to prepare a way for T. and E. than ever I did for myself a hundred fold. As to the outside public, I have never lost an opportunity to soften prejudices or refute falsehoods, and to excite kindly feeling among all whom I met. I am thrown among clergymen, public men, and generally the makers of public opinion, and I have used every rational endeavor to repair the evils which have been visited upon T., and with increasing success.

But the roots of this prejudice are long. The catastrophe which precipitated him from his place only disclosed feelings that had existed long. Neither he nor you can be aware of the feelings of classes in society, on other grounds than late rumors. I mention this to explain why I know with *absolute* certainty that no mere statement, letter, testimony or affirmation will reach the root of affairs and reinstate them. TIME and WORK WILL.

But chronic evil requires *chronic remedies*. If my destruction would place him all right, that shall not stand in the way. I am willing to step down and out. No one can offer more than that. That I do offer. Sacrifice me without hesitation if you can clearly see your way to his safety and happiness thereby. I do not think that anything would be gained by it. I should be destroyed, but he would not be saved. E. and the children would have their future clouded. In one point of view I could desire the sacrifice on my part. Nothing can possibly be so bad as the horror of great darkness in which I spend much of my time. I look upon death as sweeter-faced than any friend I have in the world. Life would be pleasant if I could see that rebuilt which is shattered. But to live on the sharp and ragged edge of anxiety, remorse, fear, despair, and yet to put on all the appearance of serenity and happiness, cannot be endured much longer.

I am well-nigh discouraged. If you, too, cease to trust me—to love me—I am alone; I have not another person in the world to whom I could go.

Well, to God I commit all. Whatever it may be here, it shall be well there. With sincere gratitude for your heroic friendship, and with sincere affection, even though you love me not, I am yours (though unknown to you).

(Signed)

H. W. B.

Q. I omitted to ask you a question in reference to the last letter but one which I read in evidence, which is marked "Exhibit 18," in which occurs this sentence: "My wife takes boat for Havana and Florida on Thursday." Was that letter written with your knowledge or approbation? A. No, sir; I didn't know anything about the letter.

Q. In whose handwriting is the paper I now hand you [handing witness a paper]? A. Henry Ward Beecher's.

Mr. Fullerton [reading the paper]—

MY DEAR MRS. TILTON: If I don't see you to-morrow night, I will next Friday, for I shall be gone all the fore part of the next week. Truly yours,

H. W. B.

(Letter marked "Exhibit No. 20.")

Q. Again, in whose handwriting is the paper that I now show you [handing witness a paper]? A. In the handwriting of Mr. Beecher.

Mr. Fullerton [reading the letter]—

BEECHER MORE SANGUINE.

MONDAY.

MY DEAR FRIEND: I called last evening as agreed, but you had stepped out. On the way to church last evening I met Claflin. He says that F. denies any such treacherous whisperings, and is in a right state.

I mentioned my proposed letter. He likes the idea. I read him the draft of it (in lecture-room). He drew back and said, better send it. I asked if B. had ever made him statement of the very *bottom* facts; if there were any charges I did not know. He evaded and intimated that if he had he hardly would be right in telling me. I think he would be right in telling *you*—ought to. I have not sent any note, and have destroyed that prepared.

The real point to avoid is an appeal to church and then a council.

It would be a conflagration, and give each possible chance for parties, for hidings and evasions, and increase an hundred-fold their scandal, without healing anything.

I shall see you as soon as I return.

Meantime I confide everything to your wisdom, as I always have, and with such success hitherto that I have full trust for future.

Don't fail to see C. and have a full and confidential talk.

Yours, ever,

Q. That letter was addressed to you, I believe? A. Yes, Sir.

Q. When was it received, as near as you can tell? A. I don't remember, Sir. If you will let me look at the letter, perhaps I can tell you something about it. [Looking at the letter.] It was received before May 25th, 1873. I fix the date by this fact, that Mr. Bowen was reported to be reiterating the charges against Mr. Beecher, and I had a conference with him, shortly after this letter, I think.

Q. Do you know, from anything that occurred between you and Mr. Beecher, who Mr. B. is in that letter? A. Yes, Sir: Mr. Bowen

Q. And who is C. named in that letter. A. Mr. Claflin.

Q. Do you know what proposed letter there was at that time, which is spoken of in this communication? A. There was a proposed letter to Mr. Bowen.

Mr. Evarts—Q. Well, what passed between you and Mr. Beecher? A. Mr. Beecher and myself had a conference, and he said he thought he should write a letter to Mr. Bowen with regard to his stories against him.

Mr. Fullerton—Is that what is referred to in the letter?

Mr. Evarts—Well, let us hear the conversation.

# THE FIRST WOODHULL PUBLICATION AND ITS RESULTS.

Mr. Fullerton—You understand it. We will come right to it. [To the witness.] Now I want to call your attention to a publication of Mrs. Victoria Woodhull sometime in 1872. Do you remember it? A. I remember there was a publication from Victoria Woodhull in one of the New York papers, or in two of them—*The World*.

Q. Do you recollect the date of it? A. No; I don't remember the date just now. In 1872.

Mr. Shearman—The 23d of May, 1871.

Mr. Fullerton—Yes. [To the witness.] Did you read that publication? A. Yes, Sir. Are you talking now about the publication of 1871 or 1872?

Q. I am talking about the card. A. Yes, Sir, I read it.

Q. May 22, 1871, as my attention was called to the date? A. Yes, Sir.

Q. Look at the paper I now show you and say whether it is a correct copy from the newspaper as you recollect it. [Handing witness a paper.] A. Yes, Sir; I remember that.

Mr. Fullerton—I offer that in evidence. It is from *The World*, Monday, May 22, 1871.

THE WOODHULL CARD.

A Card from Mrs. Woodhull.

To the Editor of the World:

SIR: Because I am a woman, and because I conscientiously hold opinions somewhat different from the self-elected orthodoxy which men find their profit in supporting, and because I think it my bounden duty and my absolute right to put forward my opinions, and to advocate them with my whole strength, self-elected orthodoxy assails me, vilifies me, and endeavors to cover my life with ridicule and dishonor. This has been particularly the case in reference to certain law proceedings into which I was recently drawn by the weakness of one very near relative, and the profligate selfishness of other relations. One of the charges made against me is that I live in the same house with my former husband, Dr. Woodhull, and my present husband, Col. Blood. The fact is a fact. Dr. Woodhull being sick, ailing and incapable of self-support, I felt it my duty to myself and to human nature, that he should be cared for, although his incapacity were in no wise attributable to me. My present husband, Col. Blood, not only approves of this charity, but co-operates in it. I esteem it one of the most virtuous acts of my life: but various editors have stigmatized me as a living example of immorality and unchastity. My opinions and principles are subjects of just criticism. I put myself before the public voluntarily. I know full well that the public will criticise me, my motives and actions in their own way and at their own time. I accept the position. I except to no fair analysis and examination, even if the scalpel be a little merciless. But let him that be without sin, cast the stone. I do not intend to be made the scapegoat of sacrifice to be offered up as a victim to society, by those who cover over the foulness of their lives and the feculence of their thoughts with a hypocritical mantle of fair professions, and by diverting public attention



from their own iniquity in pointing the finger at me. I know that many of my self-appointed judges and critics are deeply tainted with the vices they condemn; I live in the house with one who was my husband. I live as a wife with one who is my husband. I believe in spiritualism. I advocate free love in its highest, purest sense as the only cure for the immorality, the deep damnation by which men corrupt and disfigure God's most holy institution of sexual relation. My judges preach against "free love" openly, and practice it secretly; their outward seeming is fair, inwardly they are full of "dead men's bones and all manner of uncleanness." For example, I know of one man, a public teacher of eminence, who lives in concubinage with the wife of another public teacher of almost equal eminence. All three concur in denouncing offenses against morality. "Hypocrisy is the tribute paid by vice to virtue." So be it: but I decline to stand up as the "frightful example." I shall make it my business to analyze some of these lives, and will take my chances in the matter of libel suits.

I have no faith in critics, but I believe in justice.

VICTORIA C. WOODHULL.

(Dated) New-York, May 27, 1871.

Marked "Ex. No. 23."

Q. After the publication of that card I ask you what occurred with reference to yourself, Mr. Tilton and Mr. Beecher? A. Mr. Tilton came to me and said that he had been sent for by Victoria Woodhull, that he had gone to see her, and that she had poured out upon him stories derogatory to the character of Mr. Beecher, and had connected his (Mr. Tilton's) wife's name with Mr. Beecher as it was connected in this article. I saw Mr. Beecher about it. I told him that I thought it would be necessary in some way to influence that woman against the publication of the stories; that I thought I ought to see her, and he said he hoped I would, and I did see her in consequence of my consultation with Mr. Beecher.

Q. Up to that time had you ever seen her? A. I saw her once before I saw Mr. Beecher, once or twice.

Q. Well, go on and state what occurred? A. With Mr. Beecher?

Q. Yes, Sir. A. I have stated what occurred.

Q. After seeing her did you see Mr. Beecher? A. Yes, Sir; I saw her after Mr. Beecher, and I saw Mr. Beecher after I saw her.

Q. That is what I wanted to call your attention to. What did you state to Mr. Beecher as having occurred between yourself and Mrs. Woodhull? A. I told him that I had said to Mrs. Woodhull that the stories against Mr. Beecher had their original foundation in stories told by Mr. Bowen; that when Mr. Bowen was asked to present the evidence upon which he based his stories, he did not present that evidence, and I told him I had worked a fair influence upon the woman, that I had undertaken to show her how wrong it would be to be vindictive; there was nothing to be gained by that, and said to him that I thought that I found her amenable to moral influence, which I undertook to use upon her, and he expressed his gratification.

Q. What did he say? A. He said that he was gratified that I had had the interview with her, and thanked me for it.

Q. Nothing was published, I believe, after that, for some time at least? A. No, Sir. I believe there was, Sir, a kindly

article published in Woodhull & Claflin's paper concerning Mr. Beecher.

Mr. Evarts—Well, unless the article is to be produced, we don't care for it.

(Paper to which witness last testified, marked "Exhibit No. 23.")

Mr. Fullerton—I ask you if you recollect of anything else that occurred after your interview with Mr. Beecher, and that you have last spoken of in regard to this matter before the publication of Mrs. Woodhull in the Autumn of 1872? A. I don't at the present moment remember.

Q. Then, Sir, what occurred in November, 1872, with reference to Mrs. Woodhull? A. There was a publication in Woodhull & Claflin's paper.

Q. In regard to this? A. Yes, Sir; in regard to Mr. Beecher, Mrs. Tilton and Mr. Tilton.

Q. Now, what occurred upon that publication? A. I saw Mr. Beecher shortly after the publication.

Q. State what occurred between you? A. Mr. Beecher said that he had come to consult with me as to what it was best to do with reference to that publication; what reply could be made to it, if any reply could be made. He said he saw no hope for him since that story had been published. I told him that I thought silence would kill that story; and that if he kept silent with regard to it, simply pointing to his past life as an answer to it, and saying that if that was not an answer he did not choose to make any, that it would kill that story, in my opinion so far as any evil effect of it upon him was concerned. We consulted frequently concerning it, and did not arrive at any other conclusion than that silence was best. I said to Mr. Beecher, "If I say anything about it I think this will be the best thing for me to say uniformly; that if the story is true, it was infamous to tell; and if it was false, it was diabolical to have told it; and that if his life was not an answer to it, I could not choose to make any—I should not choose to make any to anybody." Mr. Beecher said to me that he thought it would be judicious for me to make such a reply as that; and I met him after this conversation, and I told him that I had made such a reply as that to several parties, and it appeared to satisfy them. I told him that I had been pressed close by one or two people, and I had denied that he was an impure man—I had denied that outright, I did.

Q. Well, I want to ask you whether in this article published by Mrs. Woodhull, illicit intercourse between Mr. Beecher and Mrs. Tilton was charged?

Mr. Evarts—Oh! the article should be produced.

Mr. Fullerton—Well, if you want the article—

Mr. Evarts—We don't want the article.

Mr. Fullerton—You can have the whole of it in, or have that part in. I propose to leave it out if you will admit an answer to that question, and pay no further attention to it.

Mr. Evarts—I cannot agree to any substitute for evidence.

Mr. Fullerton—I propose to give that in evidence, Sir, whether that was charged in that paper. It is not necessary that we should produce it here.

Judge Neilson—Does the learned counsel stand upon the objection that the paper would best show ?

Mr. Evarts—Yes, Sir.

Judge Neilson—Then you cannot do it. You must produce the paper ; if you produce the paper, and identify it, you can eliminate that one sentence.

Mr. Fullerton—Well, Sir, we will go on then with the evidence, and introduce the paper to-morrow.

Q. I want to ask you what reply Mr. Beecher made, if any, when you informed him that you had denied flatly to two or three persons that he was an impure man ? A. He thanked me for the pains I had taken.

Q. Now, during these interviews between you and Mr. Beecher with reference to that publication, where was Mr. Tilton ? A. Mr. Tilton, I believe, in the beginning, was in New Hampshire.

Q. And when he returned did he participate in any way ? A. Yes; he was present at an interview between Mr. Beecher and myself.

Q. What took place at that interview ? A. Mr. Tilton said to Mr. Beecher that he was not at all responsible for that story. Mr. Beecher said he did not believe he was. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. Mr. Beecher told him he did not see exactly how to meet it, at that interview—that is what was said there. I told Mr. Tilton that I thought it was best to be silent, not to attempt any reply to the story. That is the substance of what occurred there.

Q. Do you recollect whether there was a proposed card to publish in reference to it ? A. There was, subsequent to that interview.

Q. When was this interview that you now speak of ? A. Sometime subsequent to that—some time during that month, or the first part of December.

Q. When was the interview at which the proposed card—?

Mr. Beach—That is the one he has given the date of, isn't it ?

Witness—I say it was some time in the latter part of November or December.

Q. Subsequent ? A. Yes; subsequent to this interview; yes, Sir.

Q. When was the interview at which the card appeared, or was proposed ? A. Some time after this interview, Sir—the first interview, of which we have spoken, between Mr. Tilton and Mr. Beecher, the latter part of November or December.

Mr. Beach—Well, which was the latter part of November ? A. The last, Sir.

Mr. Evarts—When was the other ? A. On election day. I think, Sir.

Q. That would be earlier ? A. Yes, Sir.

Q. Mr. Fullerton—What occurred when the card was proposed. A. Mr. Tilton declined to publish any card; he declined to consider such a card, and he said it would only lead to further controversy, and he could not denounce those women to save Mr. Beecher from the result of his crime.

Q. What did Mr. Beecher reply to that ? A. don't remember his reply.

Q. What paper is that that is now handed you ? A. It is the handwriting of Henry Ward Beecher with regard to the pro-

posed card for Theodore Tilton to make. Mr. Tilton told Mr. Beecher at that interview that he knew perfectly well the circumstances under which he (Mr. Tilton) had come in contact with Mrs. Woodhull, and he said that Mr. Beecher must understand that such a card as that would be a very unjust card, and an untrue card for him to publish.

Mr. Fullerton—I shall offer it in evidence.

THE PROPOSED DENUNCIATION OF WOODHULL BY TILTON.

"In an unguarded enthusiasm, I hoped well and much of one who has proved utterly unprincipled. I shall never again notice her stories, and now utterly repudiate her statements made concerning me and mine."

By Mr. Evarts—That was the proposed card for Mr. Tilton to publish ? A. Mr. Beecher's proposed card? yes, Sir.

Q. For Mr. Tilton to publish ? A. Yes, Sir; he recommended, certainly, Mr. Tilton to publish it.

Q. It was not to be signed by Mr. Beecher, it was to be signed by Mr. Tilton ? A. To be signed by Mr. Tilton : yes, Sir.

Card marked "Exhibit A—No. 23."

Mr. Fullerton—When Mr. Tilton said to Mr. Beecher, "You know the circumstances under which my acquaintance with Mrs. Woodhull commenced," did he state these circumstances ? A. Yes, Sir.

Q. What did he say ? A. He said that he had formed the acquaintance of Victoria Woodhull in the beginning in consequence of the card which originally appeared in *The World* and that from that time onward up to the Spring of 1872, he had undertaken to use his utmost influence upon her, in a kindly way, for the purpose of suppressing the story concerning Mr. Beecher and his wife, and an unguarded enthusiasm, and that Mr. Beecher knew it was not an unguarded enthusiasm that led him to Mrs. Woodhull, but that he went to her for the purpose of protecting his family, and himself and Mr. Beecher, from the result of a story which she originally threatened.

Q. Did anything else occur at that interview, which you have not related, that you remember ? A. Nothing, but that Mr. Beecher was deeply affected at the interview.

Q. How was he affected ? A. Did not see any hope, did not see how the story was to be suppressed, he said, and he wept as usual.

Q. I now call your attention to December, 1872, about the 20th, a consultation between yourself and Mr. Tilton and Mr. Beecher in regard to a statement ? A. What is the date, Sir ?

Q. About December 20 ? A. 1872 ?

Q. Yes; about a proposed statement that was — A. Oh yes, I remember it.

Q. Where did that interview take place ? A. Took place at my house in Remsen street.

Q. State, if you please, what occurred. A. There were present Mr. Tilton, Mrs. Tilton, Mr. Beecher and myself. Mr. Tilton had communicated to me his intention of publishing what he had written, which was a story of the whole affair—the account of the whole affair. He had made one alteration in it, of statement from the exact truth or had stated the exact truth in language that was delicate, and he wanted Mr. Beecher to hear it read before it



publication, and Mr. Beecher, at my invitation, came to hear it read, and Mr. Tilton said to Mr. Beecher, "I will read to you one passage from this statement, and, if you can stand that, you can stand any part of it," and he read to him a passage from that statement, which was about as follows as nearly as I can recollect.

Mr. Evarts—The statement will speak for itself.

Mr. Fullerton—What did he read?

Mr. Evarts—The statement will state.

Mr. Fullerton—No, what did he read?

Mr. Evarts—Exactly let us have the statement.

Mr. Fullerton—No, but he read from something. What did he say when he read?

Judge Neilson—I think it is a verbal communication directly to Mr. Beecher, and therefore it is admissible.

Mr. Evarts—No, I do not understand it so. He had a written paper from which he read. We want that written paper.

The Witness—Well, Mr. Tilton stated—

Mr. Evarts—Don't argue the question.

The Witness—I beg pardon.

Mr. Evarts—We think we are entitled to the written paper, and that parole evidence of its contents cannot be given.

Mr. Fullerton—I am asking what Mr. Tilton said, or read to Mr. Beecher on that occasion.

Judge Neilson—Well, ask him what he said.

By Mr. Fullerton—Well, what did he say when he read?

Objected to.

Judge Neilson—Can you tell what he said, independently of the paper? A. Yes, Sir.

Mr. Evarts—Independently of reading from a paper, what did he say; that is, what other than what he read—

Mr. Fullerton—No, that is not my proposition.

Mr. Evarts—Well, I know that is not your proposition. It would not be extraordinary, if you did know it, because I have stated it very plainly.

Mr. Evarts—But his Honor has said—

Mr. Fullerton—I know his Honor has said, and you have said, and now I have a right to say, without interruption. We all have rights here.

Mr. Evarts—Of course you have rights here.

Mr. Fullerton—Well, it don't seem to be of course, from the way you addressed me now. Now, I propose to give in evidence what occurred between the parties on that occasion, and, if Mr. Tilton said or read anything, I want the witness to repeat what he said and what he read. I am not giving in evidence the document by any means. I do not propose that, and, even if I did, it is not such a document as it is necessary to produce here, in order to give it in evidence. What I desire to know is this; what communication was made, in any possible form, by Mr. Tilton to Mr. Beecher, that called from him a reply.

#### A SHARP BOUT OVER THE ADMISSION OF EVIDENCE.

Judge Neilson—Now, let us see what the answer to that is.

Mr. Evarts—The only answer on our part is that we want it

according to the rules of evidence. It is stated that Mr. Tilton had written what is characteristic as a full statement, or true statement, or something of this matter which he proposed to publish. That I understand the witness has said, and he had it then there, and the conversation was concerning that paper and its publication. Thereupon Mr. Tilton undertook to read to Mr. Beecher a part of that paper, saying, "If you can stand that part of the paper, you can stand the next." That is what this witness has testified to. Now, we want that paper and the part of it that was read as it appeared in that paper, and it is not competent to recite out of a written paper by oral proposition what the written paper is the best evidence of. Both Mr. Tilton's statement and this witness's hearing, was a statement by the one and a hearing by the other of what was written on a paper, and was not an independent statement, nor so proposed. Now, my learned friends either are going to give that statement in evidence, or not, or that part of that statement in evidence, or not. When they produce that paper we will examine it and consider the question whether the whole or the part is admissible, if the whole or the part shall be proposed. But now our objection is that the oral statement of this written paper cannot be given in evidence unless the foundation for it is shown by showing also the destruction of the paper.

Mr. Fullerton—My proposition, Sir, is embraced in these few words: I propose to show what communication was made by Mr. Tilton on that occasion to Mr. Beecher. I do not care whether it originated in his own mind or whether it was read from the paper, printed or written. It makes no difference. What it was he said to him is what I have a right to and what I propose to prove.

Judge Neilson—I think the witness can state what was said to Mr. Beecher, although the stated matter had been incorporated in writing, if he needs it as a statement—what was read.

Mr. Evarts—But, if your Honor please, he stated that he read from the paper.

Judge Neilson—Well, it was a paper which was proposed. It does not appear to have been adopted or acted upon—an imperfect thing.

Mr. Evarts—I do not know that, Sir. If your Honor knows more of it than me—

Judge Neilson—I say it does not appear.

Mr. Fullerton—You knew it at the time—

Mr. Evarts—That he had written a paper which was a true statement, and which he proposed to publish. How your Honor knows it was an imperfect paper, I am sure I do not understand.

Judge Neilson—I did not say I knew it was. I said it did not appear to have been perfected. I think this witness can state anything which Mr. Tilton said to the defendant on that occasion.

Mr. Evarts—Although it was writing from a paper?

Judge Neilson—Although part of it had been written on a paper; yes, Sir.

Mr. Evarts—We except.

Mr. Fullerton—Now go on.

Mr. Evarts—Let me understand what your exception is—to a

repetition by this witness of anything that was read as a part of that paper?

Judge Neilson—That is your objection. My ruling is that he may state anything that was stated by the plaintiff to the defendant on that occasion.

Mr. Evarts—Although it includes the recital of what was written from the paper?

Judge Neilson—Although it may include the recital of what had been written.

Mr. Evarts—What was read from the paper, if your Honor please, is what our point is. Our point, and we certainly are entitled to it, is that if this witness testifies that Mr. Tilton read from a paper, that that paper, as evidence of what he read, must be produced, and not the witness's memory.

Judge Neilson—Suppose that, prior to a conversation upon any question in interest, the witness makes a memorandum to assist him in the conversation. Is it to be doubted that he may go on with that conversation and use this paper, if need be, and afterwards prove what the conversation was without the production of the paper?

Mr. Evarts—The point is to take your Honor's ruling. I understand your Honor to have decided; but my objection is to the recital by this witness of a part of a paper that was read without the production of the paper.

Judge Neilson—My ruling is simply that he may state, if he can, all that the plaintiff said to the defendant on that occasion. That is all.

Mr. Fullerton—That is my question.

Mr. Evarts—Certainly your Honor proposes I shall either have the evidence excluded or my exception?

Judge Neilson—You take my ruling, of course.

Mr. Evarts—Ah! but your Honor refuses to rule upon my point, and states to me that you only rule upon something else. Now, I make an objection, and I bow to your Honor's ruling upon it, but I am entitled to one or the other.

Judge Neilson—I rule simply that he may state if he can all that the plaintiff said to the defendant on that occasion.

Mr. Evarts—And you don't rule that he may state any part of what was in that paper?

Judge Neilson—That is not involved in the proposition.

Mr. Evarts—Very well, then, I shall object to his reciting anything that was in that paper under your Honor's present ruling.

Judge Neilson—It is not a question of reading; it is a conversation between the parties.

Mr. Fullerton—What communication did Mr. Tilton make to Mr. Beecher at that interview? A. Mr. Tilton said to Mr. Beecher—

Mr. Evarts—Wait a moment. Did he read from a paper?

Mr. Beach—Wait one moment.

Judge Neilson—I think he may put that.

Mr. Fullerton—You have no right to interfere with my witness.

Mr. Evarts—I have a right to.

Mr. Fullerton—No; he is going on to state what Mr. Tilton said.

Mr. Evarts—Now, I have a right to the points of law, and I propose to have it.

Mr. Fullerton—I propose you shall not interrogate my witness while he is in my hands.

Mr. Evarts—Well, I propose to interrogate your witness while he is in your hands, to raise that question whether he is repeating from what is written, and it is the every day check of a witness who is proceeding to make a statement to ask whether that was in writing.

Judge Neilson—Undoubtedly where a writing exists affecting the interest of the parties.

Mr. Evarts—So I shall interrupt any witness with that ruling.

Mr. Fullerton—Well, you have done it; now, we will go on.

Mr. Evarts—Now, just answer the question.

Mr. Fullerton—State what Mr. Tilton said?

Mr. Evarts—No; answer the question whether it was in writing. [Laughter.]

Judge Neilson—I don't see why you should take such an interest in this question; it seems too simple to talk about.

Mr. Evarts—Does your Honor rule that I have no right to ask whether it was in writing?

Judge Neilson—Not with that view; your question has been taken down and exception.

Mr. Evarts—Well, if the witness now states anything that was in writing, I object to it.

Judge Neilson—Well, that saves your rights, perhaps.

#### THE FIRST PROPOSED STATEMENT.

Mr. Fullerton—Go on and state what communication—what did Mr. Tilton say to Mr. Beecher upon that occasion? A. Mr. Tilton said to Mr. Beecher: "Mr. Beecher, there is one thing in this statement which if you can stand, you can stand any part of it. Elizabeth has stated that you solicited her to become a wife to you, together with all that that implies, and I will read to you that part of the statement," and he did read to Mr. Beecher that part of the statement.

Q. Now, what did Mr. Beecher reply? A. And Mr. Beecher said, "Theodore you might just as well state the fact as to put it in that way;" and Mr. Beecher said to me after that interview that he would not stand in the position of a man who had solicited favors from a woman, and be put in the position of one who had been rejected by her, and I told him I sympathized with that view of the case. [Laughter and applause.]

Judge Neilson [to the audience]—You have the advantage to-day because of your numbers, but I certainly have the power to protect myself to-morrow morning. The audience has behaved very well to this moment. I want you to be still. I do not want your opinion upon this subject in any form.

Q. What reason, if any, did he give for making that? A. He gave the reason to me, Sir, subsequent to the interview; he went on at that interview and said to Mr. Tilton, "Mr. Tilton, of course you can do just as you please, but I think you ought not to publish that; it will kill me if you publish it."

Mr. Fullerton—I shall have to put in the original, perhaps at some future time.

Mr. Beach—Did I understand that Mr. Tilton was present at this time? A. Yes, Sir.



Mr. Fullerton—I call your attention to a still further interview in the month of December, 1872, when Mr. Carpenter was present. Do you recollect such a meeting? A. When, what, Sir?

Q. Do you recollect such a meeting—when Mr. Carpenter was present? A. In the latter part of December, 1872?

Q. Yes? A. The meeting with reference to a paper, do you mean?

Q. Yes? A. Yes.

Q. Before I go to that, however, let me ask you what reason Mr. Tilton assigned for writing this statement referred to in your last interview? A. Mr. Tilton said he thought it would be necessary to give the public some information concerning the story of Victoria Woodhull, that was the reason he gave.

Q. Now go to the interview where— A. I had a further conversation with Mr. Beecher on that subject.

Q. Well, state it? A. Yes; I had a further conversation with Mr. Beecher on the subject of that document, and I told him that I had said to Theodore Tilton that he must not publish it, that it would be cruel to publish it as against his family and as against Mr. Beecher; and that I had received from Theodore Tilton a promise that he would not publish it, and I had him put it—I told Mr. Beecher I had him put it—into a certain spot, and agree not to take it from that spot without my consent, and Mr. Beecher thanked me for this interference in his behalf.

Q. It was not published, was it? A. No, Sir.

Q. Now, the other interview in 1872, at which Mr. Carpenter was present—what occurred then?

Mr. Beach—The latter part of December, 1872? A. Mr. Carpenter spoke with Mr. Beecher about the establishment of—

Q. First tell us how you got together? A. I do not know; I believe Mr. Carpenter and Mr. Beecher came together to my house.

Q. What Mr. Carpenter was it? A. Mr. Carpenter the artist—Frank Carpenter.

Q. Now, state what occurred. A. He wanted Mr. Beecher—he said to Mr. Beecher: “Will you entertain the idea of going into a newspaper? Wouldn’t it save all trouble if you should resign your ministry and go into a paper?” And Mr. Beecher said he was willing to take such a subject as that into consideration; and that was the substance of what occurred at that interview.

Q. Well, what was said about the paper? Give us the interview at length, as well as you can recollect it? A. I don’t remember much more about it than that.

Q. Do you recollect what time in December this was? A. The latter part of December.

Q. What, if anything, was said at that time about the length of time that Mr. Beecher had been pastor of the Church? A. I think something was said about the 25 years that he had been a pastor.

Mr. Evarts—By whom? A. By Mr. Carpenter. Mr. Carpenter referred to his illustrious career—said to Mr. Beecher: “You have had an illustrious career as a preacher; and now it seems to me that you could step from the pulpit into a journal, and save all these stories against

yourself from being told”—put it in that view—in some such way as that; I forget the substance of it.

Mr. Fullerton—Did you hear anything more about that proposition afterward? A. Yes, Sir.

Q. From whom? A. From Mr. Beecher and from Mr. Carpenter.

Q. When they were together? A. No; I do not remember that they were together.

Q. What did Mr. Beecher say in regard to it at any subsequent time? A. I had an interview with Mr. Beecher in regard to it myself. I discountenanced the proposition; told him he had not better accept any such proposition; the place for him to work was in the pulpit—there is where he belonged, and to go out of the pulpit would be a virtual confession of the Woodhull story and the rumors against him.

Q. What did he reply to that, if anything? A. Well, that is what he told Mr. Carpenter—that is what he said he would tell Mr. Carpenter, and I believe he did tell Mr. Carpenter.

Mr. Evarts—That you do not know anything about? A. I do not know anything about that—whether he told Mr. Carpenter or not.

Mr. Fullerton—Do you recollect what was termed as “The Letter to My Complaining Friend,” which was published in December, 1872? A. Yes, Sir; I remember something about it.

Q. Did you have any conversation with Mr. Beecher afterward about it? A. Yes, Sir.

Q. Did you see the letter in the newspaper? A. Yes, Sir.

Q. See if you recognize that as a reproduction of it?

Mr. Evarts—What is the date of that?

Mr. Fullerton—That is December, 1872.

Q. Do you recognize that as the letter? A. Yes, Sir.

Mr. Fullerton—I offer it in evidence (reading).

Mr. Fullerton read a few lines and then stumbled in the reading, and at the suggestion of Mr. Beach that he had better read it over again, began again as follows:

#### THE LETTER TO THE COMPLAINING FRIEND.

NO. 174 LIVINGSTON STREET,  
BROOKLYN, December 27, 1872. }

#### MY COMPLAINING FRIEND:

Thanks for your good letter of bad advice. You say, “How easy to give the lie to the wicked story, and thus end it forever.” But stop and consider. The story is a whole library of statements—a hundred or more—and it would be strange if some of them were not correct, though I doubt if any are. To give a general denial to such an encyclopedia of assertions would be as vague and irrelevant as to take up *The Police Gazette*, with its twenty-four pages of illustrations, and say, “This is a lie.” So extensive a libel requires, if answered at all, a special denial of its several parts; and, furthermore, it requires, in this particular case, not only a denial of things misstated, but a truthful explanation of the things that remain unstated and in mystery. In other words, the false story, if met at all, should be confronted and confounded by the true one. Now, my friend, you urge me to speak; but when the truth is a sword, God’s mercy sometimes commands it sheathed. If you think I do not burn to defend my wife and little ones, you know not the fiery spirit within me. But my wife’s heart is more a fountain of charity, and quenches all resentments. She says, “Let there be no suffering, save to ourselves alone,” and forbids a vindication to the injury of others. From the beginning she has stood with her hand on my lips, saying, “Hush!” So, when

you prompt me to speak for her, you countervail her more Christian mandate of silence. Moreover, after all, the chief victim of the public displeasure is myself alone, and, so long as this is happily the case, I shall try with patience to keep my answer within my own breast, lest it shoot forth like a thunder-bolt through other hearts.

Yours truly,

THEODORE TILTON.

By Mr. Fullerton—What occurred between yourself and Mr. Beecher with reference to that letter? What newspaper was it published in? A. In one of the Brooklyn papers.

Q. Do you recollect which one? A. I think I saw it in *The Eagle*, Sir.

Mr. Fullerton—*The Brooklyn Eagle*?

[Copy of letter marked "Exhibit No. 24."]

Q. What occurred between yourself and Mr. Beecher after the publication of that letter? I saw Mr. Beecher and he said that he regretted the publication of it very much—he thought that the letter might lead to further inquiry; he said he thought it might lead to further inquiry in the matter—might lead to the telling of the whole story. I told him that I considered the letter a very injudicious one for Theodore Tilton to write: agreed with him that he ought not to have written it in the interests of peace.

Q. Is that all of that interview that you recollect. A. That is the substance of it.

#### CIRCUMSTANCES OF THE TRIPARTITE COVENANT.

Q. Do you recollect the publication of what is termed the tripartite agreement? A. Yes, Sir; I do.

Q. What occurred, if anything, between yourself and Mr. Beecher in regard to it? A. With reference to the publication of the tripartite—

Q. What occurred between you after the publication of the tripartite agreement? A. After the publication of the tripartite covenant?

Q. Yes, Sir. A. Mr. Beecher was at my house, came to my house on Saturday morning, May 31, I think it was—I think the publication of the tripartite covenant was on May the 30th—came there, I believe, because I sent for him. I sent for him because Theodore Tilton had said to me that the publication of the "tripartite covenant" placed him in the position of a man forgiven for some crime by Mr. Beecher, and that he would not stand in that position.

Q. Did you state so to Mr. Beecher? A. I told Mr. Beecher at the house—Mr. Tilton told Mr. Beecher that at the house.

Q. When Mr. Tilton told Mr. Beecher this he was present? A. Yes.

Q. Just explain again. A. Certainly, Sir.

Q. Now, you and Mr. Tilton and Mr. Beecher met there together? A. Yes, Sir. I think I sent for Mr. Beecher in consequence of Mr. Tilton having told me that this "tripartite covenant"—the publication of it—put him in the position of a man forgiven by Mr. Beecher for some crime; he was not content to stand in such a position; that that was not the truth, and he would not stand in that position.

By Judge Neilson—Then Mr. Beecher came? A. Yes, Sir.

Q. And you had an interview? A. Yes, Sir.

By Mr. Fullerton—Now what occurred?

Mr. Evarts—The question is whether Mr. Tilton was there? A. Yes, Sir.

By Mr. Fullerton—After you told him what Mr. Tilton said with regard to the effect of that tripartite agreement? A. I was giving the reasons for sending for Mr. Beecher. Now Mr. Beecher comes, or has come to the house and he is present with Mr. Tilton, and Mr. Tilton said to Mr. Beecher: "Mr. Beecher, the publication of this 'tripartite covenant' puts me in the position of a man having been forgiven by you for some crime. Now you know that is not true; I can not stand in any such position as that, nor I won't stand in any such position as that. Now I want you to set that right or I will publish this card." And he had a card for publication, into which was incorporated apart or the whole of the letter of contrition, part of it, I think, of January the 1st, 1870.

Q. The letter that has been put in evidence of Jan. 1, 1870? A. Yes, sir.

Q. And Mr. Beecher said: "Theodore, I don't see what can be done—what I can do? If you will indicate anything that I can do, I'm willing to do it; but, really, I don't see how I can. I don't think that you are right about it; I don't think that it puts you in that position." And Theodore said: "Well, it does put me in that position; and that's precisely what I shall do, unless—I shall publish this document unless you set the matter right; you ought to do it; I won't stand in that position." And Mr. Tilton, I believe, left that interview, and left me alone with Mr. Beecher, or else Mr. Beecher and myself went up into my study from the room in which we originally were; and Mr. Beecher said to me, that there seemed to be no end of complications; that as fast as we got out of one thing we seemed to get into another; that he had not been a party to the publication of the tripartite convention—that he had not been a party to it; and, if Theodore Tilton published that letter, it would simply be his death.

Q. Whose death? A. Mr. Beecher's death; I beg pardon, Sir; and I told him that I did not think it was worth while to give way to his feelings; that was what he generally did whenever an emergency came; and that if I had followed his advice, followed his fears, I should have given up the case long ago. I told him not to be distressed about it, for I thought we would find some way out; we had met difficulties before, and I told him that I thought it was not any more difficult to meet this matter than it was the Woodhull story; and if we meant to do right, one toward the other, I thought we could find a way that would settle the difficulty. If my recollection serves me right, Mr. Beecher came that Saturday night and said to me, with great despondency, that he had made up his mind to resign from Plymouth Church, and he showed to me a copy of the letter of resignation, showed to me a draft of a letter of resignation which he had prepared to be presented to the Trustees or some parties in the Church, proper parties; and I said to him that that would not do at all, that that was a virtual confession of the crime, and said that it was an act of cowardice on his part to do it—he ought to stand and undertake to prepare some sort of document that would meet the necessities



of the case, and I told him that I thought such a card as that could be prepared. I think that Theodore Tilton was in the house on Saturday night, and I told him of Mr. Beecher's proposed action. I went down stairs; I think he was in my front room, and Mr. Tilton objected to the resignation, particularly to that part of it which said that Mr. Beecher—

Mr. Evarts—Well, it was a written paper, you know.

Witness—Yes, Sir. Can I say what Mr. Tilton said?

Judge Neilson—Not unless there is consent.

Mr. Fullerton—Before we go any further, state whether that is the proposed card of Mr. Tilton.

Mr. Morris—That is a copy that I made myself from the—

Mr. Fullerton—I will substitute the original for it.

Mr. Evarts—Well, we will not quarrel about it; go on. This copy is allowed to be used for the moment in place of the original which is not at hand, but the original is to be produced, otherwise it goes for nothing.

Judge Neilson—Yes, Sir. [Paper handed to witness.]

The Witness—That is what I remember, Sir, about it.

#### TILTON'S CARD OF EXPLANATION.

To the Editor of the Brooklyn Eagle:

Samuel Wilkeson, a business partner of Henry Ward Beecher, authorized the publication of a part of a document touching the relations of Mr. Beecher and Henry C. Bowen. This document, without the addition of another, of which I presume Mr. Wilkeson had no knowledge, grossly misrepresents Mr. Beecher's relation to myself. The extent of this misrepresentation, even by well meaning journalists, is shown by the following extract from *The New York Express*:

"Something, under the circumstances, was due to the public, Mr. Beecher should remember, as well as to his peculiar friends, Mr. Bowen and Mr. Tilton, and hence, while it was well enough to forgive them for the great,—we had almost said the irreparable injury, they have done him, it is to be regretted that he did not bring the alleged slanderer or slanderers into open court, to be dealt with there as they deserved."

The above indicates the feeling of a great many good men and women as to my supposed unjust behavior towards Mr. Beecher, and is based on the notion that I have slandered a clergyman, that I have retracted the slander, and that I have been forgiven by him and magnanimously restored to his confidence. This impression, which is now becoming general, is a grievous wrong to me and my family. No longer can I consent to remain in a false position before the public. I, therefore, append the following statement by Mr. Beecher:

"BROOKLYN, January 1st, 1871.

In trust with F. D. Moulton.

MY DEAR FRIEND MOULTON: I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself. I even wish that I were dead; but others must live and suffer.

I will die before any one but myself shall be implicated. All my thoughts are running towards my friends, towards the poor child lying there and praying with her folded hands. She is guiltless—sinned against; bearing the transgression of another. Her forgiveness I have. I humbly pray God that he may put it into the heart of her husband to forgive me.

I have trusted this to *Modton* in confidence.

(Signed)

H. W. BEECHER."

The above document will show whether it is I who have wronged Mr. Beecher, or Mr. Beecher who has wronged me.

THEODORE TILTON.

174 Livingston street, June 7th, 1873.

Q. [Handing paper to witness.] Do you recollect whether anything was said about the erasure in that letter of January 1st, 1870, which appears there? A. Yes, Sir; Mr. Theodore Tilton said that the introduction of that clause, if I remember rightly, would be a virtual confession, or statement of adultery between Mr. Beecher and his wife, and, therefore, it was stricken out.

Q. The words: "Bearing the transgression of another" were stricken out—erased. The whole sentence is as follows: "She is guiltless, sinned against, bearing the transgression of another. Her forgiveness I have." The words, "Bearing the transgression of another," are erased.

Mr. Evarts—Are they erased there?

Mr. Fullerton—Yes, Sir. I asked him if anything was said at that interview about the reason why those words were erased.

Mr. Evarts—Erased in that supposed publication?

Mr. Fullerton—Yes, Sir.

Mr. Fullerton—They were erased in that supposed publication, were they not, Mr. Moulton? A. Yes, Sir.

Q. What followed that interview? A. The next thing that followed was the letter of June 1st, from Mr. Beecher.

#### THE LETTER OF RESIGNATION.

Q. No; I ask your attention to the same night.

Was there not a proposed resignation on the part of Mr. Beecher? A. I have said so, have I not?

Q. Well, I believe you have. Who prepared that proposed resignation? A. Mr. Beecher himself.

Q. Where did you see it first? A. In his hands.

Q. What did he say at the time? A. He said he had made up his mind that he would not try any longer to stand up against this story; that if Theodore Tilton was going to publish that, he might as well resign.

Q. [Handing paper to witness]. Look at the paper now shown you, and tell me what it is? A. This is a copy which I dictated in order that Theodore Tilton might consider exactly what the document was.

Q. From what did you dictate it? A. I dictated it from my memory of the document itself.

Mr. Fullerton, (to defendant's counsel)—Now, gentlemen, we have noticed you, I believe, to produce the original.

The original was not produced.

Mr. Fullerton—We will read from it. It is the reproduction of the original from his memory.

Paper marked "Exhibit No. 25."

Q. What became of the original? A. Mr. Beecher kept it.

Q. You did not keep it? A. No, Sir, I did not.

Mr. Evarts—I understand Mr. Moulton to have spoken of a resignation which was there before him.

Mr. Fullerton—Yes, Sir, and which he took away.

Mr. Evarts—Yes, Sir, and which he took away, and that became the subject of comment. What do you propose to do with this?

Mr. Fullerton—I propose, in the first place, to read from the original, if you produce it in obedience to the notice given to you for that purpose; and, if you do not produce it, I propose to read from this copy.

Mr. Evarts—We have no such paper.

Mr. Fullerton—No such paper as what?

Mr. Evarts—No such paper as your witness speaks of.

Mr. Fullerton—Where is the notice to produce? I call for the production of the paper described in our notice?

Mr. Evarts—We have no such paper.

Judge Neilson—Has notice been given?

Mr. Beach—The notice to produce is admitted.

Mr. Fullerton—Can you state the contents of that resignation which was proposed by Mr. Beecher on that occasion? A. Yes, Sir, I can, substantially.

Q. Do it as nearly as you can.

Mr. Evarts—Wait one moment. He can recite from memory, if he can, of course, the best way he can; but when you put a paper into his hands, we want to inquire where that was made, and when.

Mr. Beach—That is right; let him examine the witness.

Mr. Evarts—You have a memorandum now put into your hands? A. Yes, Sir.

Q. Where do you produce that from? A. I produce it from my possession.

Q. How long have you had it in your possession? A. I have had it since May 31, 1873.

Q. How came you to make that paper? A. I made it in order to submit to Mr. Tilton what Mr. Beecher proposed to do, at Mr. Tilton's solicitation.

Q. Was not Mr. Tilton present when this paper, as you call it, of Mr. Beecher was read? A. No, Sir, he was not.

Q. It was not at that meeting then? A. No, Sir; it was not at the meeting between Mr. Beecher, Mr. Tilton and myself.

Q. When did you write that? A. May 31, 1873, I think—Saturday evening, if my recollection serves me.

Q. Why didn't you send for the original? A. I didn't write it; I dictated it from memory to Mr. Tilton.

Q. It is in Mr. Tilton's handwriting? A. Yes, Sir.

Q. Written down by him by your dictation? A. Yes, Sir.

Q. Why didn't you send for the original? A. Because I went down stairs to see Mr. Tilton to tell him what it was. Mr. Beecher said he didn't want to see Mr. Tilton, and I went down stairs, knowing about this letter of resignation, wanting to tell Mr. Tilton what it was. Mr. Tilton said, "Tell me what it is; let me look at it." That is as near as I can recollect the circumstances under which this was dictated to him.

Q. Bowen, Mr. Tilton, and yourself were in the house together? A. Yes, Sir; Mr. Beecher was up stairs.

Q. And the paper you have spoken of, was that there? A. Yes.

Q. Why didn't you have it brought down, and show it to Mr. Tilton? A. Because I didn't think it necessary.

Q. You thought it better to dictate it to him. A. I didn't go down for the purpose of dictating it.

Q. You didn't send up stairs for the original? A. No, Sir, I didn't.

Q. That is the memorandum that you now speak by, is it? A. Yes, Sir; this is the memorandum I speak by.

Mr. Evarts—That is not a copy of the paper. It is a mere question of the witness' memory.

By Mr. Fullerton—I think you misunderstood a question put by the counsel on the other side. The question he put to you was this: "You, Mr. Tilton and Mr. Beecher were in the house together," to which you replied, "Yes, Sir."

Q. You don't mean you were in the same room? A. No, Sir.

Q. Give us a copy of the proposed resignation of Mr. Beecher produced there?

Mr. Evarts—Your memory of it.

Judge Neilson—State your recollection of its contents.

Mr. Beach—He can refer to the memorandum.

The Witness—It is this:

"I tender herewith my resignation of Plymouth Church. I have stood among you in sorrow for two years in order to save from shame a certain household; but since a recent publication makes this no longer possible, I now resign my ministry and retire to private life."

Q. That is as near as you can recollect the original resignation of Mr. Beecher? A. Yes, Sir; and that states substantially what was in the original paper. (To Judge Neilson.) May I state your Honor, how I came to find this?

Mr. Evarts—Not unless you are asked, I think.

Mr. Beach—I don't know.

The Witness—I would like to state it.

Mr. Fullerton—No objection to it. State it, Mr. Moulton.

The Witness—I read in Mr. Beecher's statement—

Mr. Evarts—Does your Honor say he has a right to state that?

Judge Neilson—I think the counsel had better interrogate him. He will come to it presently.

The Witness—I want to state precisely how I got it. I would like to do that. I want to state how I found this copy.

Mr. Fullerton—Where did you find it? A. I found it in this—

Mr. Porter—That paper is not in evidence.

Judge Neilson—It is not in evidence, but it is here produced among his papers.

Mr. Evarts—He wants to show how he came to find it. It is enough that he has got it.

Mr. Fullerton—I don't care for it. Just omit it, Mr. Moulton. (To Judge Neilson): I think we had better adjourn now, your Honor.

Judge Neilson—I want to appeal to the counsel. The hours of 11 and 4 have been very unusual to us. We always begin our work earlier and continue later, and to-morrow being Friday—understanding you decline to work on Saturday—I wish to know if counsel won't make it convenient to commence at 10 o'clock and end at 5?

Mr. Morris—This air will kill us all.

Judge Neilson—You would have Saturday and Sunday to recover after it, our sessions are so short.

Mr. Fullerton—I think that would be a greater tax on our strength than we could endure.



Judge Neilson—I only submit it to you.

Mr. Fullerton—Your Honor must understand that some of my associates make it an every-day business to spend their lives in such an atmosphere as this.

Judge Neilson—And, therefore, get used to it.

Mr. Fullerton—And, therefore, don't get used to it. I think it would be going beyond what human nature could endure.

The Court then adjourned until 11 o'clock Friday morning.

## FIFTH DAY'S PROCEEDINGS.

### THE DIRECT EXAMINATION UNFINISHED.

#### THE LATER SCENES IN THE PLYMOUTH CONTROVERSY REVIEWED—EFFECT OF THE PUBLICATION OF THE BACON LETTER—A NEW LETTER FROM MR. BEECHER TO MRS. MOULTON.

A vulgar, noisy, and impatient crowd hung around the court-room doors more than hour before the proceedings were opened. At least two-thirds of these loungers were not supplied with tickets of admission, and no opportunity for effecting an entrance offered itself to them. One of the peculiar features of this gathering was the presence of a number of feeble, gray-haired old men. Despite the currents of biting, frosty air which swept through the corridors, these thin-blooded old men lingered in the crowd, and gazed with envious eyes upon those who passed in without annoyance. Just before 11 o'clock some one shouted, "Here they come," and immediately there was a race to the rear of the Court-house. Mrs. Tilton, her face covered with a heavy lace veil, appeared with her escort, and Mrs. Shearman and Mrs. Anna M. Field, each with a gentleman. As the party made their way toward the court-room the conduct of the crowd was simply outrageous. Audible comments upon the appearance of Mrs. Tilton, coarse jibes about the plaintiff and the defendant as well, passed freely. With considerable difficulty the party threaded their way through the files of rude spectators into the court-room.

Opera glasses were numerous in the gallery on Friday, and in almost constant use during the day's proceedings. Mrs. Tilton, Mrs. Shearman, and Mrs. Field were subjected to much annoyance from this quarter. Fortunately for Mrs. Beecher, she was so seated that the back of her head alone was visible from the gallery. Two ladies whose faces had not previously been descried and stared at in the court-room, appeared early in the morning. They seemed to be quite at home, and listened with composure to

all that was said. Mr. Beecher and his wife left the court-room at recess and did not return. Mrs. Tilton remained during the afternoon.

Judge Reynolds and Judge Morse occupied seats beside Judge Neilson. The Hon. Henry C. Murphy and several clergymen took seats behind the defendant's counsel.

Just before the court adjourned Judge Neilson admonished the jury to be careful and abstain from conversation with any one concerning the merits of the case. The jury had hardly reached the sidewalk before a prominent member of Plymouth Church accosted a jurymen, and engaged with him in an earnest and at times noisy conversation. A crowd gathered around them immediately, supposing that the Beecher-Tilton suit was under discussion. Finally some one in the crowd shouted to the jurymen, "Don't talk to that man; he is a Beecher man." The conversation terminated abruptly, and the gentleman from Plymouth Church walked hurriedly away. The incident gave rise to varied discussion. It is believed that Judge Neilson will have something to say on the subject next Monday. Mr. Beecher's friend is the gentleman who on the night of Moulton's giving the lie to Prof. R. W. Raymond vociferously urged his ejection from the church.

### BY-PLAY OF THE PROCEEDINGS.

One of the earliest incidents of the day was the introduction of Mr. Beecher's letter to Mr. Moulton in which Mr. Tilton's character is analyzed and the writer's aspirations after immortality with its "beckoning glory" are breathed in glowing language. Ex-Judge Fullerton did full justice to Mr. Beecher's rhetoric, and Mr. Shearman, who kept his eyes upon the manuscript while his opponent used a printed copy, took pains not to interrupt him with corrections. When the letter in which Dr. Storrs is denounced was read Mr. Shearman adopted a different policy.

Two scraps of new testimony were here brought to light. According to Mr. Moulton's version Mr. Tilton threatened to shoot Mr. Beecher, if the resignation of the pastorate should be given to the world, because it would disgrace the Livingston-st. household. It was also hinted that Mrs. Moulton received a letter from Mr. Beecher on the day when her husband first read the "beckoning glory" letter. This letter has never been printed, and when it is offered will be one of the small surprises of the prosecution.

After Mr. Beecher's short cards, vindicating Mr.

Tilton after the publication of the "tripartite agreement," and challenging Mrs. Woodhull and any one else who had letters of his to bring them forward, had been introduced, the "West specifications," were read, special emphasis being laid upon the third clause, which, as Mr. Tilton's counsel claim, brings to naught the logic of Mr. Winslow in the report of the Investigating Committee. Mr. Evarts, with his usual precision and inflexibility, demanded the production of a document, and was referred by ex-Judge Fullerton to the archives of Plymouth Church. Mr. Evarts seemed nettled for a moment, but the cutting rejoinder came in the next breath: "I have never thought that Plymouth Church or the Christian religion was a party in this case." "I think so too," broke in Judge Neilson, in his genial, hearty way. "Subpena the clerk of the church!" cried Mr. Evarts, with an impatient gesture, as his opponent made an exasperating comment. Ex-Judge Fullerton may be in the right or he may be in the wrong, but one thing he always insists upon having—the last word. "There is some way, I suppose, of bringing in these things," was his closing comment.

Two expressions which fell from Mr. Moulton's lips about this time pleased the circle of Mr. Beecher's friends in the body of the house. One of them was the declaration which he made to Mr. Beecher that in his opinion Mr. Bowen had no evidence whatever against the pastor of Plymouth Church. The other was Mr. Beecher's comment upon his own speech at Plymouth Church when he declared that he had no charges to make against Mr. Tilton. "I made," said Mr. Beecher, according to the witness, "as full and generous a reply to Mr. Tilton as I could."

The witness's anxiety to play his best cards was painfully evident. He dragged in Dr. Storrs's name before it was time and strove to anticipate the purposes of his counsel. The letter in which Mr. Beecher denounced the course of Dr. Storrs was probably the most unwholesome thing which the members of Plymouth Church had to swallow during the day. There is neither religious fervor, generous thought, nor fine imagery here; the expressions are dry and harsh, and the effect of them was intensified by ex-Judge Fullerton's hard, metallic tones.

Then came Mr. Moulton's trump-card, and he played it well. Mr. Shearman and Mr. Moulton evidently detest each other, and neither of them at-

tempts to disguise the fact. Mr. Moulton's satisfaction, in recounting the circumstances under which Mr. Shearman's apology was sent to Mr. Tilton, shone from every feature. Mr. Shearman and he fairly glared at each other, the lawyer's face wearing a grim smile at intervals, and the witness's testimony being delivered so fluently and earnestly as to seem like a declamation. The witness, in repeating his words to Mr. Beecher, "I am not surprised at anything coming from Mr. Shearman; I don't think he is above such things," was very emphatic, almost vindictive, in tone, and the next moment came the sneering words, "Mr. Beecher wept over it and said to me that in his opinion Mr. Shearman was a mischief-maker." Mr. Evarts had a word to say about the cause of the misunderstanding, which was a reporter's version of an interview with Mr. Shearman, and the matter was finally dropped.

Ex-Judge Fullerton had an unpleasant task at the close of the morning session. It took him 40 minutes to read the elaborate letter of Theodore Tilton to the Rev. Dr. Bacon, and the recital was exceedingly uninteresting.

Gen. Tracy had to take his turn after the recess, and the witness returned with vigor to the assault upon Mr. Beecher's legal advisers. The remark of Gen. Tracy to Messrs. Woodruff & Robinson that "in the present case lying was justifiable," called forth a laugh from the audience. The intimation that Gen. Tracy had violated the principles of professional etiquette in serving as Mr. Beecher's counsel after he had given Mr. Tilton legal advice, was made in the same declamatory style as his arraignment of Mr. Shearman. Gen. Tracy, however, was imperturbable, and only evinced amusement.

A keen passage of repartee between ex-Judge Fullerton and Mr. Evarts relieved the tedium of the afternoon's work. The prosecution had attempted to introduce testimony without connecting it with Mr. Beecher, as they were legally bound to do. Mr. Evarts protested against this irregularity, and the Judge promptly sustained him. Ex-Judge Fullerton consented to amend his method, but complained that his opponents were compelling him to put the cart before the horse. "Ah!" broke in Mr. Evarts, "You may put the cart, and never bring the horse!" Everybody smiled, but in the next breath ex-Judge Fullerton brought back the laugh to his side with the retort, "You want neither cart nor horse. You will see what the horse draws into the case."



Beyond the admission that Mr. Moulton had told his partners as early as 1871 the secret of Mr. Tilton's household and the recital of Mr. Beecher's comment on Gen. Butler's character, the closing passages of the examination were dull and spiritless. The assistance of ex-Judge Morris, who was confined to his house by illness, was sorely missed by the prosecution in the presentation of evidence. His familiarity with the correspondence and the minutest details of the case enables him to control the order of testimony, and to put his fingers on the documentary evidence without a moment of delay. His partner, Mr. Pearsall, had charge of the papers, but was so awkward at one time in finding what was wanted that Mr. Tilton nervously seized the package and worried over it himself.

### SCANDAL BLOSSOMS.

The court-room, or rather that part of it reserved for counsel, was fragrant with the odors of hot-house plants. The violet vied with the lily, and the chaste camellia was in contrast with the petals of the "red, red rose." For several days past the table near Mr. Beecher's seat has been decorated with choice flowers from the conservatory of a friend. A beautiful bouquet of violets was placed in the vase yesterday morning, and a similar bouquet was presented to Mrs. Beecher. The wife of Theodore Tilton had no sooner taken her seat and removed the heavy lace veil which covered her face, than a member of Plymouth Church handed her a delicate cluster of violets and white rose-buds. The flowers were presented with a graceful compliment. That little bunch of flowers had a significance to her which few in the court-room appreciated. It was an intimation that she was still kindly remembered in Plymouth Church. Her thanks were expressed very unaffectedly. It is true that there were many present who smiled sardonically, and saw in the presentation an attempt to produce a dramatic effect, but such were evidently not her thoughts.

The display of flowers on "the Plymouth side of the house," as it is designated by the spectators, was very marked, and gave rise to many complimentary and uncomplimentary criticisms. Quite naturally, under the circumstances, when a magnificent and showy bouquet of roses, violets, lilies, and arbutus was brought to Mr. Tilton, it attracted the attention of the entire audience, counsel not excepted. The plaintiff blushed like an innocent school-boy as he detached

the card attached to the floral tribute, and read the inscription, "To Theodore Tilton, with the compliments of his friends." Immediately afterward a hat-box was handed to Mr. Tilton, and removing the cover, he drew forth a bouquet, if anything more conspicuous than the first. By this time the counsel and the witness on the stand ceased to attract the attention of the spectators, and Mr. Tilton and his group of counsel were under every eye. The plaintiff had scarcely deposited his gifts upon the table at which he was sitting, before two additional bouquets were passed over to him, the larger one being for ex-Judge Morris. Mr. Tilton's face turned crimson, and a smile ran around the courtroom. Gen. Pryor moved uneasily in his seat, Mr. Shearman appeared much amused, ex-Judge Beach looked solemn, and Mr. Fullerton, although busily examining Moulton, stopped for a moment, and cast a quizzical glance at the sentimental offerings which seemed so strangely out of place in a court room. From one of the bouquets Mr. Tilton drew a note written on tinted paper. He read the contents with an appearance of gratification, and then placed it in his pocket.

The effect produced by the floral display indulged in by the friends of the plaintiff and the defendant was not calculated to draw out compliments for either. If the jury and spectators were romantic young ladies of poetical fancies, the floral tributes might have touched some tender chords, but the majority of the spectators in the court-room were of a practical turn of mind, and so—they simply smiled. As for Mr. Tilton, while he no doubt had a keen appreciation of the compliments bestowed, he was without question greatly embarrassed. It is safe to say that the great question at issue will not be settled in favor of the man who can show the greater number of bouquets. "Rosemary and rue" may be in order, but roses and violets are out of place just now.

### LEGAL ASPECTS OF THE CASE.

The presentment of the evidence for the plaintiff is regarded by many lawyers as exceedingly able. The burden of his case was the documentary evidence, and it was essential that this should be introduced as early as possible. Every letter, however, had to be connected with Mr. Beecher, and Mr. Moulton was the only witness who could do this. Those letters which Mr. Beecher did not write himself were either intrusted to Mr. Moulton or the substance of them was referred to during the

interviews between them. In this way the bulk of the scandal literature which was incorporated in Mr. Moulton's statement last Summer has been set before the jury. In other respects, however, the prosecution displayed great acuteness in calling Mr. Moulton in preference to Mr. Tilton. In the first place, as the intimate associate of Mr. Beecher, from that stormy night in the closing hours of 1870 to the early sessions of the Investigating Committee in the Summer of 1874, he was able to present the case in the natural order of time from beginning to end. He began when the controversy opened, on the night when Mr. Tilton confronted Mr. Beecher and made the first charge, and he has gone on from stage to stage of the controversy until the Investigating Committee met and the rupture between himself and Mr. Beecher occurred. In so complicated a case it was exceedingly difficult to bring the details of the evidence in their natural order before the jury, but ex-Judge Fullerton has been equal to the occasion, and the jury have been spared needless confusion. Another advantage of their method was this: The first version of the whole case has been furnished, not by the plaintiff, who is most vitally interested, but by his friend, the associate of the defendant.

The cross-examination of this witness will undoubtedly be an extremely rigorous one. It will be conducted by ex-Judge Porter, who has had very little to do with the proceedings thus far. The opening address for the defendant will probably be made by Gen. Tracy, although the trust may be confided to Mr. Shearman. Mr. Evarts and ex-Judge Porter will probably sum up jointly for the defense, and Mr. Beach and Gen. Pryor for the prosecution.

#### THE PROCEEDINGS.

Ex-Judge Morris was the only one of the counsel absent when the Court opened on Friday morning. After the customary formalities, Judge Neilson asked if the counsel were ready. Then Mr. Fullerton explained that Mr. Morris was kept at home and in bed by sickness, and that his absence would greatly embarrass their actions, for he was most familiar with the voluminous documents which form so large a part of the plaintiff's case. The direct examination of Francis D. Moulton was then resumed at the point reached when the Court adjourned the previous day—with reference to what is known as the "tripartite agreement."

#### MUTUAL EFFORTS FOR CONCEALMENT.

Judge Neilson—Are the counsel ready to proceed?

Mr. Fullerton—May it please your Honor, we are somewhat embarrassed this morning on our side, by the absence of Judge

Morris—who is quite ill and unable to leave his bed—in the presentation of our documents, Judge Morris having been very familiar with them, having put his marks upon them so that he could manipulate them with convenience, and we shall have to ask your Honor's indulgence a little, probably, from time to time, on account of that embarrassment.

Judge Neilson—I very much regret his illness.

Francis D. Moulton was recalled, and the direct examination resumed:

Mr. Fullerton—Mr. Moulton, at the adjournment last night, you were detailing what occurred after the publication of the tripartite agreement, and had spoken of the proposed resignation from Plymouth Church, and of an interview which you had with Mr. Tilton in your house. I want to ask you, first, whether you reported the substance of that interview with Mr. Tilton to Mr. Beecher? A. I did; yes, Sir.

\*Q. And what did you say to him? A. I said that Mr. Tilton strongly objected to the publication of the resignation on the ground that it was a clear statement, in his opinion, of the shame of his wife.

Q. What did Mr. Beecher reply to that? A. The reply of Mr. Beecher to that, Sir, I do not remember; but I said to Mr. Beecher, "Clearly that is the case. Sir; clearly, if the resignation should be published, it would be a virtual confession of the fact of your relations with Mrs. Tilton, and it ought not to be done."

Q. Did you communicate to Mr. Beecher anything else that Mr. Tilton said in regard to that proposed publication? A. I told Mr. Beecher that Mr. Tilton was quite violent; Mr. Tilton said that he would shoot Mr. Beecher if he did it. I think that I mentioned that to Mr. Beecher. That is what Mr. Tilton told me, at all events.

Q. The publication did not follow, I believe? A. It did not follow.

Q. What was said about a counter-statement of any kind? A. I said to Mr. Beecher that I thought it would be possible to frame a card that would cover the case, and at all events there was between that time and Monday to consider it, and we had better consider it.

Q. Was a card proposed? A. There was, on Sunday—I think it was Sunday afternoon—Sunday evening.

Q. Who proposed the card? A. I had told Mr. Tilton, Sir, that I thought it would be wrong for him to publish the letter which he threatened to publish.

Q. Which I read in evidence yesterday? A. Yes, Sir; I told him I thought he ought not to do it. I thought he ought to undertake to find a different way, and he promised me at last that he would try, and he did; and he did prepare a card which would be satisfactory to him, which I submitted to Mr. Beecher on Sunday night; and I said to Mr. Beecher, "I think that will cover the case." In the meantime I had received a letter from Mr. Beecher.

Q. Is the letter now shown you the one that you speak of [handing witness a letter]? A. Yes, Sir; that is the letter.

Mr. Fullerton—I propose to read it.

Mr. Evarts—Is that from Mr. Beecher?

Mr. Fullerton—Yes, Sir.



Mr. Evarts—This is the one you say you received in the meantime? A. I received it on the morning of June the 1st, Sunday morning, while I was in bed.

Q. Before the interview with Mr. Beecher? A. Of Sunday—yes, Sir.

Mr. Fullerton [reading the letter]:

SUNDAY MORNING, June 1, 1873.

MY DEAR FRANK: The whole earth is tranquil and the heaven is serene, as befits one who has about finished his world-life. I could do nothing on Saturday—my head was confused. but a good sleep has made it like crystal. I have determined to make no more resistance. Theodore's temperament is such that the future, even if temporarily earned, would be absolutely worthless, filled with abrupt charges, and rendering me liable at any hour or day to be obliged to stultify all the devices by which we have saved ourselves. It is only fair that he should know that the publication of the card which he proposes would leave him far worse off than before.

The agreement was made after my letter through you was written. He had it a year. He had condoned his wife's fault. He had enjoined upon me with the utmost earnestness and solemnity not to betray his wife or leave his children to a blight. I had honestly and earnestly joined in the purpose. Then this settlement was made and signed by him. It was not my making. He revised his part so it should wholly suit him, and signed it. It stood unquestioned and unblamed for more than a year. Then it was published. Nothing but that. That which he did in private when made public excited him to fury, and he charges me with making him appear as one *graciously pardoned by me!* It was his own deliberate act, with which he was perfectly content till others saw it, and then he charges a grievous wrong home on me!

My mind is clear. I am not in haste. I shall write for the public a statement that will bear the light of the judgment day. God will take care of me and mine. When I look on earth it is a deep night. When I look to the heavens above I see the morning breaking. But, oh! that I could put in golden letters my deep sense of your faithful, earnest, undying fidelity, your disinterested friendship. Your noble wife, too, has been to me one of God's comforters. It is such as she that renews a waning faith in womanhood. Now, Frank, I would not have you waste any more energy on a hopeless task. With such a man as T. T. there is no possible salvation for any that depend upon him. With a strong nature, he does not know how to govern it. With generous impulses, the undercurrent that rules him is self. With ardent affections, he cannot love long that which does not repay him with admiration and praise. With a strong theatric nature, he is constantly imposed upon with the idea that a position, a great stroke, a *coup d'état* is the way to success.

Besides these, he has a hundred good things about him; but these named traits make him absolutely unreliable.

Therefore, there is no use in further trying. I have a strong feeling upon me, and it brings great peace with it, that I am spending my *last Sunday* and preaching my last sermon.

Dear, good God, I thank thee I am indeed beginning to see rest and triumph. The pain of life is but a moment; the glory of everlasting emancipation is wordless, inconceivable, full of beckoning glory. Oh! my beloved Frank, I shall know you there, and forever hold fellowship with you, and look back and smile at the past. Your loving

H. W. B.

(Letter marked "Exhibit No. 26.")

Q. What time in the day did you receive that letter? A. In the morning, Sir.

Q. Did you see another letter written on that day by Mr. Beecher? A. This letter was inclosed in a letter to my wife, I believe.

Q. Did you see the letter addressed to your wife? A. Yes, Sir; I have seen it. I saw it then, I believe.

Mr. Fullerton—I will not produce it now. You have spoken of a card which was prepared at the time. Look at the paper now shown you and say whether it is the one. [Handing witness a card.] Was the card published? A. There was a card published; yes, Sir; substantially the card which we considered that night; some alteration from it—some alteration of it, rather.

Q. Under what circumstances did the alteration take place? A. Mr. Beecher said to me that he thought there were some words or phrases that might be left out judiciously, and they were left out.

Q. And then published? A. Yes.

Q. After the emendations that you speak of? A. Yes, Sir.

Q. Look at that paper, and say whether that is the card? [Handing witness a printed paper.]

Mr. Evarts—Is that the printed paper?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Haven't you the original?

Mr. Fullerton—That is the original.

Mr. Evarts—No; I understand Mr. Tilton wrote a card.

By Mr. Fullerton—Q. Where is the card that was written, do you know? A. I saw it a few days ago in Mr. Tilton's possession.

Mr. Fullerton—To Mr. Tilton—Well, let me have that.

Mr. Tilton—I think Mr. Moulton has it.

Mr. Fullerton—That is one of the embarrassments growing out of Judge Morris's unfortunate illness. I will produce it before I get through.

Mr. Evarts—Well, I would like it now.

Mr. Fullerton—Perhaps you would like it because we haven't got it.

Mr. Evarts—No, you have got it; the witness says you have.

The Witness—I say I saw it.

Mr. Evarts—We would not like to have this evidence go on without that paper.

Mr. Fullerton—I can read it from the newspaper and substitute the original, if that will answer your purpose.

Judge Neilson—You can do that by consent, Sir, if the counsel consent to it.

Mr. Fullerton—This is the original of the card that was published.

Mr. Evarts—Oh, well, you have not proved that.

Mr. Beach—I think we have.

Mr. Evarts—It is a part of the matter no doubt, but Mr. Tilton wrote a card which was the very matter that was proposed to Mr. Beecher's consideration, and was the topic of conversation, and some changes being made between the parties there, it was afterwards published. Now, we want the transaction as it occurred.

Mr. Beach—We proposed just now to produce the card as amended by Mr. Beecher and published. When we find the other we will produce that.

Judge Neilson—Won't that be satisfactory, Sir? If the other is not found it is to be stricken out, or reconsidered.

Mr. Evarts—Well, I do not want to accumulate too many instances of that kind. We have one lying over.

Judge Neilson—Will you hold that in reserve ?

Mr. Beach—We are under no obligation to produce the one that was originally drawn and amended by Mr. Beecher ; still, we are willing, and intend to do it.

Mr. Evarts—That is another matter.

Judge Neilson—It is proper that it should be produced, undoubtedly.

Mr. Evarts—Yes, Sir, I think so.

Mr. Fullerton—Shall I read the one that was published ?

Mr. Evarts—Are we to have the other ?

Mr. Fullerton—It is not here.

The Witness—It was not published from the manuscript that Mr. Tilton furnished, Sir.

Mr. Evarts—No ; I understand that.

Judge Neilson—There was a copy sent to the printer ?

The Witness—Mr. Beecher made a letter himself, Sir, acting upon the idea of Mr. Tilton's proposed card.

Judge Neilson—That paper you will produce when you can find it ?

Mr. Fullerton—Yes, Sir. [Reading the card.]

To the Editor of the Brooklyn Eagle.

June 2, 1873.

DEAR SIR :—I have maintained silence respecting the slanders which have for some time past followed me. I should not speak now, but for the sake of relieving another of unjust imputation. The document that was recently published, bearing my name, with others, was published without consultation, either with me or with Mr. Tilton, or with any authorization from us. If that document should lead the public to regard Theodore Tilton as the author of the calumnies to which it alludes, it will do him great injustice. I am unwilling that he should even seem to be responsible for injurious statements whose force was derived wholly from others.

H. W. BEECHER.

Marked "Exhibit No. 27."

Q. What was the document recently published ? A. The "Tripartite Covenant."

#### BOWEN AND CLAFLIN SEEKING EVIDENCE.

Q. This card that you now speak of, as I understand you, was prepared and published after the proposed resignation from the ministry ? A. Yes, Sir.

Q. The next day, was it not ? A. Published on June the 2d, Sir—Monday, June the 2d.

Q. Now, was there another card published soon after that ? A. Yes, Sir ; there was a card published after that.

Q. State the circumstances under which that card was prepared ? A. What card do you refer to, Sir ?

Q. The second card of Mr. Beecher, following June 2d ? A. There was the card that I have in mind now, Sir, that I am referring to, if you will allow me to speak of that.

Q. Yes, Sir. A. It was the card with reference to the visit of Mr. Bowen to Mrs. Woodhull.

Q. That is the one, Sir ; you are right. Now, tell the circumstances under which it was prepared, and the circumstances which led to its preparation, as you learned them from Mr. Beecher ? A. There was an account in the paper of Mr. Bowen and Mr. Claflin visiting Mrs. Woodhull together, for the purpose of getting evidence.

Mr. Evarts—What is the object of this ?

Mr. Fullerton—It is only introductory, Sir, to the meeting with Mr. Beecher.

The Witness—And this account in the paper of the visit of Mr. Bowen and Mr. Claflin to Mrs. Woodhull's, for the sake of getting evidence against Mr. Beecher, I thought rather serious ; and I saw Mr. Beecher in regard to it, and I said to him, "I think, Mr. Beecher, we can make very short work of such business ; think, and you think, that Mr. Bowen has not any evidence in his possession against you, and we better publish a card in *The Eagle*, calling upon anybody with any papers or evidences against you to produce them ;" and Mr. Beecher prepared a card with reference to that matter, which met with my approval, and I took it down to *The Eagle* office.

Q. Look at the paper now shown you and say if it is the card that you speak of ? [Handing witness a card.] A. This is the card as it was prepared ; yes, Sir.

Mr. Fullerton—I propose to read it. Go on and finish the narration ? A. Mr. Beecher was out of town, or was going out of town, upon the day that I saw Mr. Kinsella, of the *Brooklyn Eagle*, and Mr. Kinsella himself altered the phraseology somewhat, and we jointly took the responsibility of printing it with the alterations ; and I saw Mr. Beecher subsequently, and he said that he approved of the alterations, and thanked me for my kind offices in the matter ; and Mr. Beecher said to me, furthermore, "Of course Mr. Tilton will not produce any documents." "Well," I said, "of course he won't ; he hasn't got any that I know of—original documents—to produce, and of course I won't."

By Mr. Evarts—What conversation is this ? A. The conversation with Mr. Beecher, Mr. Evarts.

Q. At what interview ? A. At the interview at the preparation of this card.

Q. When that paper was there ? A. Yes ; certainly.

Mr. Fullerton—The proposed card reads as follows ;

Brooklyn, June, 1873.

I have seen in the morning papers that application has been made to Mrs. Victoria Woodhull, for certain letters of mine supposed to contain information respecting certain infamous stories against me. She has two business letters, one declining an invitation to a suffrage meeting, and the other declining to give the assistance solicited. These and all letters of mine in the hands of any other persons, they have my cordial consent to publish. I will only add, in this connection, that the stories and rumors which have, for a time, been circulated about me, are grossly untrue, and I stamp them, in general and in particular, as utterly false.

(Marked "Exhibit No. 28.")

Q. In whose handwriting is the interlineation in that card that I have just read, or proposed card ? A. Mr. Beecher's.

Q. The erasures—do you know anything of them ? A. They were made by Mr. Beecher.

By Mr. Evarts—I understand, Mr. Moulton, that that paper as it reads, omitting what is erased and reading that pencil interlineation, is as it came from Mr. Beecher ? A. Yes, Sir ; that is precisely the paper which I took to *The Brooklyn Eagle* office.

Q. And the alterations there made were not made in this paper ? A. No, Sir ; I have a copy of the article as Mr. Kinsella changed it, and wrote it in pencil.



By Mr. Fullerton—It has just been shown to you, has it not, in print? A. Yes, Sir; that is the article.

Mr. Fullerton—I now read the card as amended and published.

The Witness—There is omitted, Sir, from that lead pencil memoranda of mine some of the sentences that occur in the original letter. I did it to save time.

Mr. Fullerton—[Reading.]

*To the Editor of The Brooklyn Eagle :*

SIR : In a long and active life in Brooklyn it has rarely happened that *The Eagle* and myself have been in accord on questions of common concern to our fellow-citizens. I am for this reason compelled to acknowledge the unsolicited confidence and regard of which the columns of *The Eagle* of late bear testimony. I have just returned to the city to learn that application has been made to Mrs. Victoria Woodhull for letters of mine supposed to contain information respecting certain infamous stories against me.

Mr. Fullerton—I think there is some misapprehension about this. I shall have to ask the witness whether that part of it in parenthesis was published. [Handing witness the book]. A. No, Sir.

Q. That was not published? A. No, Sir.

Q. Then I am to read it without the parenthesis? A. Without the parenthesis.

Mr. Evarts—Haven't you got the very publication?

Mr. Fullerton—It does not seem to be here.

Mr. Evarts—The newspaper itself; that will show.

Mr. Fullerton—It is not here.

The Witness—I can tell you for what purpose those parenthesis were introduced.

Mr. Evarts—Well, that is no matter.

Mr. Fullerton—Not at present.

Mr. Evarts—If your Honor please, there is some danger of getting into a little confusion and doing injustice, perhaps, to one side or the other. The direct and satisfactory evidence of what was published in *The Eagle* would be, of course, the production of the newspapers, and then we could all see for ourselves what it was. I had supposed this printed letter or note, which we are all familiar with, was what was published in *The Eagle*, but it seems that we cannot trust it for that—that as Mr. Moulton says it is not the same; therefore if they could give us the copy of *The Eagle*, we should be glad, and then we could see.

Judge Neilson—It would be better, no doubt, Sir.

Mr. Evarts—Otherwise there may be some confusion.

Mr. Fullerton—I will defer this branch of the case until we get a copy of *The Brooklyn Eagle*. Probably it would be well to strike out what was read from the card.

Judge Neilson—From the printed card?

Mr. Fullerton—From the printed card; when it is published it will all go in together

Judge Neilson—Yes, Sir; we may as well.

#### THE WEST CHARGES AGAINST TILTON.

Mr. Fullerton—I call your attention now to the 25th of June, or to an occurrence that took place about that time. Do you recollect anything that occurred in reference to

Mr. West? A. I believe Mr. West preferred charges against Mr. Tilton.

Mr. Evarts—Well, what occurred, if you please? A. Mr. Tilton brought around to my house the charges of Mr. West about that time.

Mr. Fullerton—Look at the paper now shown you, and say whether it contains the charges thus produced to you by Mr. Tilton?

Mr. Evarts—Does he name that as the paper that was produced?

Mr. Fullerton—I say that.

Mr. Evarts—I assume you are going to correct it.

Mr. Fullerton—Oh! certainly.

The Witness—Yes, Sir; that is the paper.

Q. State whether you showed those charges to Mr. Beecher? A. I don't remember that I did.

Q. How? A. I don't remember that I showed them to Mr. Beecher.

Q. Did you have any conversation with him in regard to it? A. Yes, Sir; I had conversation with him in regard to it.

Q. What was that conversation? A. He said that the whole matter had better go over until Fall, and in the meantime, during the vacation, I thought we could get along with that subject—try to find a way. I told him I should recommend—

Mr. Evarts—I understand that this is one of the papers that Mr. Tilton brought you; these very papers? A. Those are the papers, that is, as I remember.

Q. You showed them to Mr. Beecher? A. I don't know that I showed them to him; no, Sir.

Q. But you spoke to him about the paper Mr. Tilton had brought you? A. I spoke to him about Mr. West's charges.

Q. Mr. Fullerton—Did you state to him the substance of the charges? A. Yes, Sir; I told him I had a full conversation with Mr. Beecher about it.

Mr. Evarts—They don't seem to have been shown to Mr. Beecher?

Mr. Fullerton—Did you state the substance of the charges to Mr. Beecher? A. Yes, Sir, I did, certainly; I have answered that.

Q. And what was said by him in reply? A. Why, he hoped that he would be able to find a way to get over that matter during the Summer.

Q. And what was proposed? A. I proposed that Mr. Tilton should—or I said that Mr. Tilton proposed to me that he should—write a letter saying that he declined, on the ground of non-membership.

Q. Of Plymouth Church? A. Yes, Sir, non-membership—that he would decline, on the ground of non-membership, an investigation; I thought that was the way out.

Mr. Evarts—Well, I understood you to say that it was Mr. Tilton suggested—did I understand you to say that Mr. Tilton suggested that as a way of escape from the dilemma? A. Yes, Sir, Mr. Tilton said so.

Mr. Beach—That he should write a letter declining? A. Yes, Sir; he was willing to do that. I told Mr. Beecher that Mr. Tilton would be willing to write a letter stating that he would decline an investigation on the ground of non-membership.

Mr. Evarts—You said that because Mr. Tilton had told you so?

A. Yes, Sir; certainly.

Mr. Fullerton—I read the charges in evidence :

BROOKLYN, Oct. 16, 1873.

MR. THEODORE TILTON.

DEAR SIR: At a meeting of the Examining Committee of Plymouth Church, held this evening, the Clerk of the Committee was instructed to forward to you a copy of the complaint and specifications made against you by Mr. Wm. F. West ; and was requested to notify you that any answer to the charges that you might desire to offer to the Committee should be sent to the Clerk of the Committee on or before Thursday, Oct. 23, 1873. Inclosed I hand you a copy of the charges and specifications referred to.

Yours, very respectfully, D. W. TALLMADGE.  
393 Bridge-st.

*Copy of the Charges and Specifications made by Wm. F. West against Theodore Tilton.*

I charge Theodore Tilton, a member of this church, with having circulated and promoted scandals derogatory to the Christian integrity of our pastor, and injurious to the reputation of this church.

#### SPECIFICATIONS.

*First:* In an interview between Theodore Tilton and Rev. E. L. L. Taylor, D. D., at the office of *The Brooklyn Union*, in the Spring of 1871, the said Theodore Tilton stated that Rev. Henry Ward Beecher preached to several—seven or eight—of his mistresses every Sunday evening. Upon being rebuked by Dr. Taylor, he repeated the charge, and said that he would make it in Mr. Beecher's presence, if desired.

Witness: Rev. E. L. L. TAYLOR, D. D.

*Second:* In a conversation with Mr. Andrew Bradshaw, in the latter part of November, 1873, Theodore Tilton requested Mr. Bradshaw not to repeat certain statements which had previously been made to him by Mr. Tilton, adding that he retracted none of the accusations which he had formerly made against Mr. Beecher, but that he wished to hush the scandal on Mr. Beecher's account; that Mr. Beecher was a bad man, and not a safe person to be allowed to enter the families of his church; that if this scandal ever were cleared up, he (Mr. Tilton) would be the only one of the three involved who would be unhurt for it, and that he was silently suffering for Mr. Beecher's sin.

Witness: ANDREW BRADSHAW.

*Third:* At an interview with Mrs. Andrew Bradshaw, in Thompson's dining rooms, in Clinton-street, on or about the 3d of August, 1870, Theodore Tilton stated that he had discovered that a criminal intimacy existed between his wife and Mr. Beecher. Afterwards, in November, 1872, referring to the above conversation, Mr. Tilton said to Mrs. Bradshaw that he retracted none of the accusations which he had formerly made against Mr. Beecher.

Witness: MRS. ANDREW BRADSHAW.

(Two papers attached and marked each as "Exhibit No. 29.")

Mr. Fullerton—State whether any reply to this letter of Mr. Tallmadge was prepared? A. I think there was, Sir.

Q. Now, by whom? A. I think that the letter was prepared by Mr. Tilton.

Q. Was Mr. Beecher consulted in regard to it? A. I think I saw Mr. Beecher with regard to it; yes, Sir.

Q. It was published, wasn't it? A. It was published; yes, Sir.

Mr. Evarts—You mean to say that you did see Mr. Beecher? A. Yes, Sir; that is my recollection, that I saw Mr. Beecher.

Mr. Fullerton [addressing defendant's counsel]—Gentlemen, that is embraced in our notice to produce [showing Mr. Evarts a paper]. Plymouth Church had it.

Mr. Evarts—Yes, but Plymouth Church is not the defendant. Mr. Fullerton—I thought it was so considered, by the church at all events.

Mr. Evarts—No; we have never thought Plymouth Church or the Christian religion was defendant here.

Judge Neilson—That has been my view of the case.

Mr. Fullerton—Well, perhaps not.

Mr. Evarts—A notice to produce papers that belonged to Mr. Beecher to have, of course we shall meet. But a notice to produce papers that, on the very face of them, are in the archives of Plymouth Church is not a notice to the defendant to produce papers in his possession.

Judge Neilson—It has no force or effect.

Mr. Fullerton—Well, Sir, we shall produce—get the paper in Court some way.

Mr. Evarts—You can very easily. Mr. Tallmadge can be subpoenaed.

Mr. Fullerton—I call your attention to something that occurred in October, 1873, growing out of a publication in *The New-York Sun*, without stating what it was. A. Growing out of a publication in *The New-York Sun*?

Q. Yes, Sir; on the subject of expelling Mr. Tilton from Plymouth Church. Do you recollect an interview in regard to that subject? A. I don't remember that.

Q. Do you recollect that Mr. Beecher was sent for, and considered at your house, in connection with Mr. Tilton, this proposed action of Plymouth Church in regard to the membership of Mr. Tilton? A. I remember that there was to be a meeting at Plymouth Church in October. I don't remember the extract from *The Sun*, whether it was in October, 1873, or not; I don't remember; but there was to be a meeting at Plymouth Church, in which the charges against Mr. Beecher were to be considered.

Q. Against Mr. Beecher? A. Against Mr. Tilton, that is, were to be considered; I had an interview with Mr. Beecher in the presence of Mr. Tilton, I think, concerning what was to be done at that meeting.

Q. Now state what that interview was, please? A. An understanding—I said to Mr. Beecher, that I thought that the proper way out of it was simply to drop Mr. Tilton's name from the roll of the Church, and Mr. Beecher agreed to that; that is as I remember the—

Q. Well, how would that prevent any action?

Mr. Evarts—Oh! well, that is not proper.

Mr. Fullerton—What was said upon that subject? A. That his not being a member of the church—I said if he was not a member of the church the charges against him could not be investigated, and consequently there could not be any exposure of the facts in the case as between himself and Mrs. Tilton.

Q. A few moments ago you spoke of a proposed letter by Mr. Tilton, in which he should decline the trial at Plymouth Church, on the ground of non-membership? A. Yes, Sir.

Q. Do you know whether such a letter was written, or not? A. I think it was written; yes, Sir.

Q. Did you go to Plymouth Church that night? A. I did not, but I had a conversation with Mr. Tilton.

Q. Did you have a conversation with Mr. Beecher in regard



to the action of Plymouth Church that night? A. I had a conversation, I have repeated it; yes, and agreed with Mr. Beecher as to what the course should be, in the presence of Mr. Tilton.

Q. No, I am speaking of what occurred at Plymouth Church that night? A. Oh! no; I was not at Plymouth Church that night.

Q. Did you have a conversation with Mr. Beecher as to what did occur? A. Afterwards, yes, Sir; with Mr. Beecher afterwards.

Q. Now, let us see what that conversation was? A. He said that Mr. Tilton had come down there—told me the circumstances; he said that Mr. Tilton had come down to the church and had said in the presence of the congregation that if he had slandered his pastor, he was there to answer for it, and Mr. Beecher said, "I made to him as full and generous a reply as I knew how to make." That is the substance of what—

Q. How long was that after the meeting at Plymouth Church? A. Not very long after; I don't remember how long.

Q. Well, was it within a few days? A. Within a few days; I should say within a day or two.

#### THE CHURCH COUNCIL AND DR. STORRS.

Q. Now the next event in the order of time that I want to call your attention to was the proposed Council of the Church. Do you recollect that? A. I recollect that there was to be a Council of Churches.

Q. And did you have an interview with Mr. Beecher in regard to it? A. Yes, Sir.

Q. State what occurred? A. Mr. Beecher did not want—Mr. Beecher said he did not want Theodore to take any part in that Council; that if he could maintain silence—not utter a word—until after the dissolution of the Council—that if that could be bridged over, he thought everything would be safe; that is substantially what I remember about it.

Q. Did he speak of Dr. Storrs in that conversation? A. After Dr. Storrs had made a speech before the Council, I received from him a letter concerning Dr. Storrs's speech; I had said to Mr. Beecher, Sir, that I understood that Dr. Storrs would consider it necessary to be severe—

Mr. Evarts—Well, this is not drawn out by any question.

Mr. Fullerton—Yes; it is drawn out by the question. I asked him whether, in that interview, he said anything in regard to Dr. Storrs.

Mr. Evarts—Whether Mr. Beecher did?

Mr. Fullerton—Yes.

Mr. Evarts—Well, how is that material?

Mr. Fullerton—That will appear after it comes in evidence.

Mr. Evarts—Oh! yes; but on the face of the matter it is immaterial.

Mr. Fullerton—It is in connection with this Church Council. Judge Neilson—'I think we will have to take it, and see whether it is.

Mr. Fullerton—Go on and state, if you please, what he said in regard to it. A. Yes, Sir; that Dr. Storrs intended to be severe on Mr. Tilton, and I told Mr. Beecher that I did not think that would be the proper course for Dr. Storrs to pursue, that I thought it was not ingenious for him to do it.

Q. Go on and finish the conversation. A. And he said he thought it would not be right for Dr. Storrs to do it; that is before the speech of Dr. Storrs was made, Sir, now that I am speaking of; then Dr. Storrs made his speech, and followed the letter.

Q. Look at the letter which I show you now and see in whose handwriting it is? A. Mr. Beecher's handwriting; is that all that you want to know?

Q. Letter written to you? A. Yes, Sir.

Q. Did you receive it about the time of its date? A. I did.

[Letter submitted to defendant's counsel.]

Mr. Fullerton—Have you any objection to it, gentlemen?

Mr. Evarts—I suppose not.

[Confidential.]

MY DEAR FRANK: I am indignant beyond expression. Storrs's course has been an unspeakable outrage. After his pretended sympathy and friendship for Theodore he has turned against him in the most venomous manner—and it is not sincere. His professions of faith and affection for me are hollow and faithless. They are merely tactical. His object is plain. He is determined to force a conflict and to use one of us to destroy the other if possible. That is his game. By stinging Theodore he believes that he will be driven into a course which he hopes will ruin me. If ever a man betrayed another he has. I am in hopes that Theodore, who has borne so much, will be unwilling to be a flail in Storrs's hand to strike at a friend. There are one or two reasons, emphatic, for waiting until the end of the Council before taking any action.

1. That the attack on Plymouth Church and the threats against Congregationalism were so violent that the public mind is likely to be absorbed in the ecclesiastical elements and not in the personal.

2. If Plymouth Church is *disfellowshipped* it will constitute a blow at me and the church, far severer than at him.

3. That if Council does not *disfellowship* Plymouth Church, then, undoubtedly Storrs will go off into Presbyterianism, as he almost, without disguise, threatened in his speech, and, in that case, the emphasis will be *there*.

4. At any rate, while the fury rages in Council, it is not wise to make any more that would be one among so many, as to lose effect in a degree, and after the battle is over one can more exactly see what ought to be done. Meantime I am *patient*, as I know how to be, but pretty nearly used up with inward excitement, and must run away for a day or two and hide and sleep, or there will be a funeral.

Cordially and trustingly yours,

H. W. B.

March 25, 1874.

No one can tell under first impressions what the effect of such a speech will be. *It ought to damn Storrs.*

[Letter marked "Exhibit No. 30."]

Q. [Handing letter to witness.] There is another letter, Mr. Moulton, which you will please look at and say in whose handwriting it is? A. In the handwriting of Mr. Beecher.

Q. To whom is it addressed? A. To me.

Q. Did you receive it about the time of its date? A. I did; yes, Sir.

Mr. Fullerton—I read it in evidence:

Sunday Night, March 29, 1874.

MY DEAR FRANK: Is there to be no end of trouble? Is wave to follow wave in endless succession? I was cut to the heart when C. showed me that shameful paragraph from *The Union*. Its cruelty is beyond description. I felt like lying down and saying, "I am tired—tired—tired of living, or of trying to resist the devil of mischief." I would rather have had a javelin launched against me a hundred times than against those that have suffer

ed so much. The shameful indelicacy of bringing the most sacred relations into such publicity, fills me with horror.

But there are some slight alleviations. The paragraph came when the public mind was engaged with the Council and with Theodore's letters. I hope it will pass without further notice. If it is *not taken up* by other papers it will sink out of sight and be forgotten; whereas, if it be assailed, it may give it a conspicuity that it never would have had. But I shall write Shearman a letter, and give him my full feeling about it. I must again [be], as I have heretofore been, indebted to you for a judicial counsel on this new and flagrant element. My innermost soul longs for peace; and if that cannot be, for death—that *will* bring peace. My fervent hope is that this drop of gall may sink through out of sight, and not prove a mortal poison. Yours ever,

H. W. BEECHER.

I have written strongly to Shearman, and hope that he will send a letter to T., unsolicited. I am sick, head, heart and body, but must move on! I feel this morning like letting things go by the run!

[Copy of letter marked "Exhibit No. 31."]

Q. Now, Mr. Moulton, state if you please, whether you saw the paragraph in *The Union*, to which reference is there made? A. I did.

Q. State the substance of it?

Mr. Everts—We would rather have the paragraph.

Mr. Fullerton—It is not necessary, if your Honor please, we should produce those newspapers that are incidentally referred to. That is not the rule. I only wanted to know the subject matter of the article.

Judge Neilson—The subject matter we have got; I think the paper ought to be produced. You can produce it hereafter.

Mr. Fullerton—It is referred to as a collateral matter.

Judge Neilson—It is not remotely collateral. I think the paper should be produced. You can introduce it hereafter.

Q. After receiving that letter did you see Mr. Beecher? A. Yes, Sir; I saw him.

Mr. Everts—The paper is in the letter.

Mr. Fullerton—The paragraph from *The Union* is as follows—

Mr. Everts—We consent to this being read as if the paper was here. We only want to object to memory as to accuracy. We understand that to be the same.

Mr. Fullerton [reading]:

At the close of the service, a *Union* reporter approached Mr. Beecher, for the purpose of getting his views as to the Council, but he declined to be interviewed. Mr. Shearman, the Clerk of the Church, however, was communicative. He said he had received no intimation, as yet, what course the Council would pursue. In regard to the scandal on Mr. Beecher, he said, so far as Tilton was concerned, he (Tilton) was out of his mind, off his balance, and did not act reasonably. As for Mrs. Tilton, she had occasioned the whole trouble while in a half-crazed condition. She had mediumistic fits, and while under the strange power that possessed her, often spoke of the most incredible things, declared things possible that were impossible, and among the rest had slandered Mr. Beecher. Mr. Tilton himself had acknowledged that all the other things she had told him in her mediumistic trance were false and impossible; then why, asked Mr. Shearman, should the scandal on Mr. Beecher be the only truth in her crazy words?

Q. What, if anything, did Mr. Beecher say to you in regard to

that publication? A. He thought it was outrageous—he said it was.

Q. If you can recollect anything else he told you, please state it? A. He said he would write; I don't remember whether I saw him before he wrote the letter or not, but I had a conversation with him concerning that paragraph—whether it was before or after the receipt of this letter I don't remember; and I said to him: "Mr. Beecher, you know that that statement is false with regard to Theodore, and you know that it is false with regard to Elizabeth Tilton, and Theodore Tilton, unless it is corrected, will make trouble about it. It is an outrage; I am not surprised at it as coming from Mr. Shearman at all; I don't think he is above such matters." That is what I told Mr. Beecher, and Mr. Beecher said to me that he thought it was an outrage; that he thought it was a cruelty; that it caused him an almost unspeakable agony, and he wept over it, and I told him that I should go to see Mr. Shearman about it, and I did go to see Mr. Shearman about it.

Mr. Everts—No matter about what passed between you and Mr. Shearman.

The Witness—I am not going to say anything about that, Sir; I saw Mr. Beecher after I had seen Mr. Shearman, and I told Mr. Beecher that Mr. Shearman refused to read the paragraph when I placed it before him on his desk, and I told Mr. Beecher that I had subsequently taken Mr. Tilton to see Mr. Shearman, and that Mr. Shearman had made an explanation to Mr. Tilton, which Mr. Tilton denounced as false; and I saw Mr. Beecher subsequently, and I told him of a letter which Mr. Shearman had given to me to give to Mr. Tilton, which Mr. Tilton had refused to receive, on the ground that it contained a deliberate falsehood, and that unless Mr. Shearman did write another letter taking it back, as it should be retracted, that Mr. Tilton would make trouble about it; and I told Mr. Beecher subsequently that Mr. Shearman had written a letter of retraction, and had received back from me the letter which he wrote at first, and which Mr. Tilton stigmatized as a falsehood; and Mr. Beecher said to me also that it was his opinion that Mr. Shearman was a mischief-maker. [Laughter.]

Q. By Mr. Everts—You have not stated when this was? A. In an interview I had with him concerning this paragraph in *The Union*.

Q. When? A. Shortly after the paragraph in *The Union* appeared.

Mr. Beach—I suppose we have that correspondence, if it is desired to fix the date.

The Witness—The date of Mr. Shearman's letter would fix it.

Q. By Mr. Fullerton—[Handing a book to witness.] Look at that and see if it will fix the date of Mr. Shearman's letter?

Mr. Everts—The date of the conversation is all that is necessary.

Mr. Fullerton—That will enable him to fix the date of the conversation.

The Witness—It is dated April 2, 1874.

Q. Does that enable you to state when the conversation of



which you have spoken took place? A. The conversation was before Mr. Beecher's letter a short time, or after Mr. Beecher's letter a short time.

Mr. Evarts—It was all one conversation, was it? A. No, Sir; there were several conversations.

Mr. Fullerton—His statement is directly contrary to that.

Mr. Evarts—I would like to have the line drawn between what is in one and what is in the other.

Mr. Beach—That is sufficiently indicated by his examination so far.

Q. By Mr. Fullerton—Can you give the dates of these several conversations of which you speak? A. I cannot; but they were quite near together.

Q. Were you present when either of Mr. Shearman's letters were delivered? A. Present when Mr. Shearman's letter was delivered to Mr. Tilton?

Q. Yes, Sir. A. Mr. Shearman gave to me that letter of April 2.

Mr. Evarts—I suppose this is all irrelevant?

Judge Neilson—It is a mere incident in the order of dates. I think he may answer what he knows about this case, because it connects the chain.

The Witness—Mr. Shearman gave me the letter to deliver to Mr. Tilton.

Q. Who was present when you delivered the letter of April 2 to Mr. Tilton?

Mr. Evarts—Your Honor will see that it is all immaterial, and I would like to state my views in regard to it. All this matter arises out of a reporter's paragraph in *The Union*; it is not a paragraph printed by Mr. Shearman or by anybody; it is a reporter's statement of an interview with Mr. Shearman, as I understand it, in *The Brooklyn Union*, which is a paper here—*The Christian Union*, is it?

Mr. Fullerton—*The Brooklyn Union*.

Mr. Evarts—*The Brooklyn Union*, a political paper—a secular paper. What Mr. Beecher says about that is good evidence of course, and that we have; but what passes between Mr. Tilton and Mr. Moulton and Mr. Shearman afterwards, getting before the public what, it was complained, was improperly represented in that paragraph of the report of the interview, we suppose is wholly immaterial!

Mr. Beach—Undoubtedly. We don't offer anything of the kind.

Mr. Evarts—All this seems to me to be of that kind of character.

Mr. Beach—Oh! no.

Mr. Fullerton—The gentleman will see the propriety of this evidence when I inform him that I expect to prove by the witness that Mr. Beecher was present when the letter was delivered. My question, to which Mr. Evarts objected, was when this letter was delivered.

Judge Neilson—I think he can answer that, yet the general view presented by the counsel is correct, unless it is corrected.

Mr. Evarts—We think it is all wholly immaterial.

Mr. Fullerton—Who was present when this letter of April 2 was delivered? A. I think Mr. Beecher was present.

Mr. Evarts—You mean to say he was present? A. I think he was present; my recollection is that he was present.

Mr. Evarts—I cannot chase after these interviews—a mere notion that a man was present.

Mr. Fullerton—You can make objections beyond all doubt. (Laughter.) The witness is not willing to say he (Beecher) was present.

Judge Neilson—The witness says he thinks he (Beecher) was present. [To the witness]. State your best recollection in regard to it? A. My best recollection is that he was present. I remember the conversation when Mr. Beecher, Mr. Tilton, Mr. Shearman and myself were present.

Q. Was that when this letter was delivered? A. I am not clear as to that. I am quite clear as to Mr. Beecher being present when the letter was delivered.

Mr. Fullerton—[Handing a letter to witness].—Look at the letter and state? A. My impression is, I showed this letter to Mr. Beecher before it was delivered to Mr. Tilton, and not that he was present when it was delivered.

Mr. Fullerton—Now, I propose to read it in evidence.

BROOKLYN, April 2, 1874.

DEAR SIR; Having seen a paragraph in *The Brooklyn Union* of Saturday last, containing a report of a statement alleged to have been made by me concerning your family and myself, I desire to assure you that this report is seriously incorrect, and that I have never authorized such a statement.

It is unnecessary to repeat here what I have actually said upon these subjects, because I am now satisfied that what I did say was erroneous, and that the rumors to which I gave some credit were without foundation. I deeply regret having been misled into an act of unintentional injustice, and am glad to take the earliest occasion to rectify it.

I beg, therefore, to withdraw all that I said upon the occasion referred to as incorrect (although then believed by me), and to repudiate entirely the statement imputed to me as untrue and unjust to all parties concerned.

Yours obediently,

Theodore Tilton, Esq.

T. G. SHEARMAN.

[Copy of letter marked "Exhibit No. 32."]

#### INSIDE HISTORY OF THE BACON LETTER.

Q. Do you recollect what is known in this controversy as "the Bacon letter?" A. Yes, Sir.

Q. When was that letter written, in point of time? A. In June of 1874.

Q. When did you first become acquainted with its existence? A. The day after its publication.

Q. From whom did you receive your information? A. From Theodore Tilton.

Q. By the Bacon letter, are we to understand it as a letter written by Theodore Tilton to Dr. Bacon? A. Yes, sir.

Q. Did you have any interview with Mr. Beecher upon that subject? A. Yes, Sir.

Q. State, if you please, what that interview was, and when it was? A. I remember an interview in my study, at which Mr. Shearman, Mr. Tilton, Mr. Beecher and myself were present. Mr. Tilton said to Mr. Beecher that he knew perfectly well that he (Tilton) was not the creature of his magnanimity, as Dr. Bacon alleged; that he was not a dog and a knave—had not been in his treatment of Mr. Beecher; and that he could not

rest under that imputation, and wanted Mr. Beecher to set the matter right with Dr. Bacon; and that if he did not, he (Theodore Tilton) should. That is substantially the conversation that I remember. That is the first conference, and then I saw Mr. Beecher afterwards about it.

Q. Don't you recollect anything else that took place at that first interview; if there was any reply to the observation, I want you to state it? A. Mr. Beecher said that he didn't see what reply he could make; that the case was full of embarrassments; that, if he should make a reply to Dr. Bacon, it would be considered as something like a confession; he made some reply of that sort; I don't remember the exact language he used, but he pleaded his embarrassments; the general impression in my mind is that he was surrounded by embarrassments which made it difficult for him to do it.

Q. What was referred to when he spoke of not being the creature of Mr. Beecher's magnanimity; that he wasn't a dog or a knave? A. His own action in regard to Mr. Tilton's family; Mr. Tilton referred specifically to his action with reference to his family.

Q. Did he not refer to Dr. Bacon's articles that had appeared in *The Independent* from time to time? A. Yes, Sir; that was the subject of the conversation; but the direct reference that was made in regard to Mr. Tilton's not being the creature of his magnanimity was, that he (Mr. Beecher) knew that he (Tilton) was not the creature of his magnanimity, on account of his knowledge of Mr. Tilton's relations with his family.

Q. This proposed letter of Mr. Tilton, called the Bacon letter, was in reply to these various articles in *The Independent*? A. Yes, Sir.

Q. Was the Bacon letter there then under consideration? A. I don't remember that it was.

Q. Was it afterward produced, what Mr. Tilton proposed to publish? A. No, Sir; it was not produced at that time.

Q. At any subsequent time was it produced? A. I don't think it was to Mr. Beecher.

Q. Did you have any conversation with Mr. Beecher in regard to the contents of it? A. I had an interview with Mr. Beecher, more than one interview, in which I said I would undertake to prevent the writing of it.

Q. State what you said to him in that conversation? A. I said I would undertake to prevent the reply to the Bacon letter; that I did not think Mr. Tilton should reply to it.

Q. You said, "reply to the Bacon letter?" A. I said to Mr. Beecher, I would undertake to prevent Mr. Tilton making any reply to the Bacon letter—to Dr. Bacon.

Q. Tell us all that occurred on that subject in that interview, when you proposed to prevent the reply to Dr. Bacon? A. I told Mr. Beecher that Mr. Tilton had said to me that if he replied to Dr. Bacon, he should tell the whole truth with regard to Mr. Beecher's relations with his family; that I considered that would be an outrage, if Theodore Tilton did it upon his family; that he ought not to do it, and that feeling that way I should undertake to prevent the writing of it, and that if I could not prevent the writing of it, that I would try to prevent the publication of it; and Mr. Beecher said to me, he hoped that I would prevent the writing of that letter.

Q. What occurred then in regard to it? A. After that I saw Mr. Tilton, and I told him I thought he ought not to think of writing a reply to Dr. Bacon, that it was better for him to undertake to live it down, that I did not think the effect of Dr. Bacon's letter in *The Independent* and his speech at the college would have such an effect on him in New-England as he expected it would have, and I communicated what I had said to Mr. Tilton to Mr. Beecher, and Mr. Beecher said that he agreed with me, that he thought it would not have the effect upon Theodore Tilton in New-England that he thought it would have, that Dr. Bacon did not have such an extensive influence as he, Theodore, thought he had. Then I saw Mr. Tilton after the letter had been fully prepared; I had not seen it during its publication, and he said to me, "I think that I ought to read to you the letter." I said, "Well, if you have written it, then I would like to hear it read."

Mr. Evarts—We don't want anything stated that is not connected with Mr. Beecher.

The Witness—I am going to connect it with Mr. Beecher.

Judge Neilson—Pass over your conversation with Mr. Beecher and tell the rest; that will cover the whole ground.

The Witness—I said to Mr. Beecher that I had heard the Bacon letter read before its publication; that I had undertaken, and did succeed, in having taken from that letter the phrase, "He has committed against my family a revolting crime," and of having substituted in its place a statement that instead of that he had committed an offense. I told him that that was as much as I had been able to do with Mr. Tilton, and that is the substance of what occurred.

Mr. Evarts—That was after the publication? A. After the publication; I told Mr. Beecher that the letter, as originally read to me, contained the words, "has committed against me and my family a revolting crime," and I told Mr. Beecher the reason for my having substituted the words "offense" or "crime."

Mr. Fullerton—In the Bacon letter? A. In the Bacon letter.

Mr. Beach—What did you tell him? A. I said that I had an idea that if he stated that he, Beecher, had committed against him and his family a revolting crime, that as that was the truth there would be no escape from that; but if the word "offense" was used, and the apology followed the charge of offense in the words of the Bacon letter, seeing that would be considered honorable but for the attack on him by Mr. Beecher in his church, I thought that might afford a basis for reconciliation—that the use of that word "offense" would.

Q. [Handing paper to witness.] State whether you recognize the paper now shown you—whether you recognize the Bacon letter so-called? A. Yes, Sir; that is it, I think.

Mr. Fullerton—I propose to read that letter in evidence. [Reading.]

SIR: I have carefully read your New-Haven address concerning the late Council, and also your five essays on the same subject, just concluded in *The Independent*.

The numerous and extraordinary misrepresentations of my position which these writings of yours will perpetuate to my injury, if not corrected, compel me to lay before you the data for their correction—misrepresentations which, on your part, are



of course wholly unintentional, for you are incapable of doing any man a wilful wrong.

In producing to your inspection some hitherto unpublished papers and documents in this case, I need first to state a few facts in chronological sequence, sufficient to explain the documentary evidence which follows.

I. After I had been for fifteen years a member of Plymouth Church, and had become meanwhile an intimate friend of the pastor, knowledge came to me in 1870 that he had committed against me an offense which I forbore to name or characterize. Prompted by my self-respect, I immediately and forever ceased my attendance on his ministry. I informed him of this determination as early as January, 1871, in the presence of a mutual friend, Mr. Francis D. Moulton.

The rules of Plymouth Church afforded me a choice between two methods of retirement: one to ask for a formal letter of dismissal; the other, to dismiss myself less formally by prolonged absence. I chose the latter. In so doing, my chief desire was to avoid giving rise to curious inquiries into the reasons for my abandoning a church in which I had been brought up from boyhood; and therefore I did not invite attention to the subject by asking for a dismissory letter, but adopted the alternative of silently staying away—relying on the rule that a prolonged absence would finally secure to me a dismissal involving no publicity to the case.

Several powerful reasons prompted me to the adoption of this alternative, among which were the following: The pastor communicated to me in writing an apology signed by his name. He also appealed to me to protect him from bringing reproach to the cause of religion. He alleged that an exposure would forbid him to re-ascend his pulpit. These, and other similar reasons, I had no right or disposition to disregard; and I acted upon them with a conscious desire to see Mr. Beecher protected rather than harmed.

II. At length my absence from the church—an absence of which not three members of the congregation, beside the pastor, knew the cause—began to excite comment in private circles.

Some of the members hinted that I had lapsed into a lamentable change of religious views—whereas my views continued to be the same as they had been for many years previous; and though they had long before ceased to find their honest expression in the formal creed which I had professed in my childhood at the altar of Plymouth Church, yet my religious faith had not changed from that early original more than the views of some of the most honored members and officers of the same church had changed within the same time.

Other persons insinuated that I had adopted un-Christian tenets concerning marriage and divorce:—whereas, touching marriage, I have always held, and still hold, with ever-increasing firmness, the one and only view common to all Christendom; and touching divorce, the substance of what I held was, and still is, the needful abrogation of our unjust New-York code, and the substitution of the more humane legislation of New-England and the West.

Other persons fancied that I had become a Spiritualist of an extravagant type:—whereas, I have never yet seen my way clear to be a Spiritualist at all—certainly not to be so much a Spiritualist as some of the most prominent members of Plymouth Church are known to be.

All these suppositions, and many others, but never the right one, became current in the church (and still are) to explain my suddenly sundered membership; the true reason for which has been understood always by the pastor, but never by his flock.

III. At length, after many calumnious whisperings, near and far (since evil tales magnify as they travel), a weekly paper in New-York, in November, 1872, published a wicked and horrible scandal—a publication which some persons in the church ignorantly attributed in its origin and animus to me; whereas I had previously spent many months of constant and unremitting endeavor to suppress it: an endeavor in which, with an earnest motive, but a foolish judgment, I made many ill-directed sacri-

fices of my reputation, position, money, and fair prospects in life; for all which losses of things precious, since mine alone was the folly, let mine alone be the blame.

IV. In May, 1873, occurred the surreptitious publication of a tripartite agreement signed by H. C. Bowen, H. W. Beecher and myself—an agreement which, so far as I was concerned, had for its object to pledge me to silence against using or circulating charges which Mr. Bowen had made against Mr. Beecher. This covenant, as originally written, would have bound me never to speak, not only of Mr. Bowen's, but also of my own personal grievances against Mr. Beecher. I refused to sign the original paper. My position in the amended paper was this: Mr. Bowen had made grave charges against Mr. Beecher. These charges Mr. Bowen had been induced to recall in writing. I cheerfully agreed never to circulate the charges which Mr. Bowen had recalled.

V. In August, 1873, Mr. William F. West, a member of Plymouth Church, hitherto a stranger to me, came to my residence, accompanied (at his request) by my friend Mr. F. B. Carpenter, and told me that when the summer vacation was over, he (Mr. W.) meant to cite me before the church on the charge of circulating scandals against the pastor; declaring, in Mr. C.'s presence, that Mr. Beecher had acted as if the reported scandalous tales were true rather than false, and urging that I owed it to myself and the truth to go forward and become a willing witness in an investigation. I peremptorily declined to join Mr. West in his proposed investigation, and declared that as I had not been a member of Plymouth Church for several years, I could not be induced to return to that church for any purpose whatever, least of all for so distasteful a purpose as to participate in a scandal. Mr. West had meanwhile discovered that my name still remained on the church roll; from which circumstance he determined to assume that I was still a member, and to force me to trial. Accordingly, a few weeks later, he brought forward charges which were nominally made against myself, but really against the pastor—charges which, if I may characterize them by the recently published language of the present clerk of Plymouth Church, were "an indirect and insincere method of investigating one man under the false pretence of investigating another."

Some leading members, including especially the pastor, desired my co-operation in defeating Mr. West, and I cheerfully gave it. To this end, I wrote—with their pre-knowledge and at their urgent desire—a letter declining to accept a copy of the charges addressed to me as a member, on the ground that I had, four years previously, ceased my connection with the church. For this letter, I received, on the next day after sending it, the pastor's prompt and hearty thanks. An understanding was then had between Mr. Beecher and myself, in an interview at the residence of Mr. Moulton, that Mr. West's indictment against me was to be disposed of in the following way, namely: by a simple resolution to the effect that, whereas I had, four years previously, terminated my membership; and whereas, by inadvertence my name still remained on the roll; therefore resolved that the roll be amended in accordance with the fact. This was to put Mr. West's case quietly out of court without bringing up the scandal.

To my surprise and indignation, I learned on the morning of October 31, 1873, that the report which was to be presented at the church meeting to be held on that evening would not be in the simple form already indicated, but would declare that whereas I had been charged with slandering the pastor; and whereas I had been cited before the church to meet the charge; and whereas I had pleaded non-membership as an excuse for not appearing for trial; therefore resolved that I should be dropped, etc.

This gross imputation, thus foreshadowed to me, led me to appear in person at the church on that evening, there to await the reading of the forthcoming report. This report, when it came to be read, brought me the following novel intelligence, namely, "Whereas a copy of the charges was put into the

hands of the said Tilton on the 17th of October, and a request made of him that he should answer the same by the 3d of October," etc.

I do not know to this day whose hand it was that drew the above report, and therefore I am happily saved from an offensive personality when I say that the statement which I have here quoted is diametrically the opposite of the truth; for instead of my having been requested to answer the charges, I had been requested *not* to answer them.

After the public reading of the above report I arose in the meeting and said, in Mr. Beecher's presence, that if I had slandered him I would answer for it to his face; to which he replied, in an equally public manner, that he had no charge whatever to make against me.

VI. Next, growing out of the church's singular proceedings in this case, came the Congregational Council of which you were Moderator.

The above facts and events—which I have mentioned as briefly as possible, omitting their details—will serve as a sufficient groundwork whereon to base the correction of the unjust and injurious statements which you have unwittingly given of my participation and responsibility in the case. With the Congregational theories and usages which you have so ably discussed, I have no concern—you are probably right about them. But as to all the essential facts growing out of my relationship to Plymouth Church, you have been wholly misinformed—as you will see by the following proofs:

I. You say that I retired from the church, giving no announcement of my so doing to any proper officer; in other words, that I stole out secretly, letting no one in authority know of my purpose. Your language concerning me is as follows:

"His position was that he had terminated his membership four years previously—not by requesting the church (as by its rules he might have done) to drop his name from its roll," etc.

You then ask:

"Is this the beautiful non-stringency of the covenant which connects the members of that church with the body, and with each other? What sort of a covenant is that which can be dissolved at any moment, not merely by mutual consent, nor by either party giving notice to the other, but by a silent volition in the mind of either?"

The above is a thorough misstatement of the manner in which I left Plymouth Church.

On the very first occasion of my meeting the chief officer of the church, after my retirement from it, I gave notice to him of that retirement. At a later period I repeated this notice to other officers of that body. In evidence of this fact I adduce the following extract from a recent card by Mr. Thomas S. Shearman, Clerk of Plymouth Church, published in *The Independent*, June 18, 1874. He says:

"Long before any charges were preferred against him, Mr. Tilton distinctly informed the clerk of the church and various other officers and members (myself included) that he had withdrawn and that his name ought to be taken off the roll."

II. You say that I have either "a malicious heart," or "a crazy brain." I know the fountain-head of this opinion. While the Council was in session in Brooklyn, the following startling paragraph appeared in *The Brooklyn Union* of Saturday, March 28, 1874:

Mr. Fullerton—I need not read the article from *The Brooklyn Union*, which was read awhile ago.

Mr. Evarts—No, Sir.

My attention was not called to the above paragraph until after the Council had adjourned, and its members had gone to their homes. At first, I was not willing to believe that the Clerk of Plymouth Church—the same officer whose name had been officially signed to all the documents which the church had just been sending to the Council—could have been guilty of such an outrage against truth and decency as the above paragraph contained—particularly against a lady whose devout re-

ligious faith and life are at the farthest possible remove from spiritualism or fanaticism of any kind. Accordingly I procured the following sworn statement by the reporter certifying to the accuracy of his report:

Mr. Fullerton—I don't propose to read the report.

Mr. Beach—I don't know why you should not read it.

Mr. Fullerton—With the consent of my learned opponents, I leave out part of this letter, only stating that the correspondence resulted in the letter of Mr. Sherman, which I have heretofore read.

Mr. Evarts—There is no object in reading it.

III. You ask, "when did Mr. Tilton cease to be responsible to the Plymouth Church?" I answer that I first ceased my responsibility to that church when I terminated my membership four years ago. I afterwards voluntarily renewed my responsibility to the church on the evening of Oct. 31, 1873, by appearing in person at one of its public meetings, and offering to answer, then and there, in the pastor's presence, the charge that I slandered him. Less than two months ago, I still further renewed my responsibility to Plymouth Church, as will appear by the following correspondence:

BROOKLYN, May 4, 1874.

REV. HENRY WARD BEECHER, *Pastor of Plymouth Church*;  
REV. S. B. HALLIDAY, *Associate Pastor*; and MR. THOMAS  
G. SHEARMAN, *Clerk*.

GENTLEMEN:—I address, through you, to the church of which you are officers, the following statement, which you are at liberty to communicate to the church through the Examining Committee, or in any other mode, private or public:

The Rev. Leonard Bacon, D.D., LL.D., Moderator of the recent Congregational Council, has seen fit, since the adjournment of that body, to proclaim, publish and reiterate, with signal emphasis, and with the weight of something like official authority, a grave declaration which I here quote, namely:

"It was for the Plymouth Church," he says, "to vindicate its pastor against a damaging imputation from one of its members. But with great alacrity—the pastor himself consenting—IT THREW AWAY THE OPPORTUNITY OF VINDICATION." . . . "That act," he continued, "in which the PLYMOUTH CHURCH THREW AWAY THE OPPORTUNITY OF VINDICATING ITS PASTOR, was what gave occasion for remonstrances from neighboring churches." . . . "There are many," he says also, "not only in Brooklyn, but elsewhere, who felt that the church had not fairly met the question, and by evading the issue had THROWN AWAY THE OPPORTUNITY OF VINDICATING ITS PASTOR."

The Moderator's declaration is thus made three times over that the Plymouth Church, in dealing with my case, THREW AWAY ITS OPPORTUNITY OF VINDICATING THE PASTOR.

This declaration so emphatically repeated by the chief mouth-piece of the Council, and put forth by him apparently as an exposition of the Council's views, compels me, as the third party to the controversy, to choose between two alternatives.

One of these is to remain contentedly in the dishonorable position of a man who denies to his former pastor an opportunity for the vindication of that pastor's character—an offense the more heinous because an unsullied character and reputation are requisite to his sacred office.

The other alternative is for me to restore to his church their lost opportunity for his vindication by presenting myself voluntarily for the same trial to which the church would have power to summon me if I were a member—a suggestion which (judging from my past experience) will subject me afresh to the unjust imputation of reviving a scandal for the suppression of which I have made more sacrifices than all other persons.

Between these two alternatives—which are all that the Moderator leaves to me—and which are both equally repugnant to my feelings—duty requires me to choose the second.

I therefore give you notice that if the Pastor, or the Examining Committee, or the church as a body, desire to repossess



the opportunity which the Moderator laments that you have thrown away. I hereby restore to you this lost opportunity as freely as if you had never parted with it.

I authorize you (if such be your pleasure) to cite me at any time within the next thirty days to appear at the bar of Plymouth Church for trial on the charge heretofore made against me, namely, that of "circulating and promoting scandal derogatory to the Christian integrity of the pastor and injurious to the reputation of the church."

My only stipulation concerning the trial is that it shall not be held with closed doors, nor in the absence of the pastor.

I regret keenly that the Moderator has imposed on me the necessity for making this communication, for nothing but necessity would exhort it.

The practical good which I seek to achieve by this proposition is that, whether accepted or declined, it will in either case effectually put an end forever to the Moderator's grave charge that Plymouth Church has been deprived through me of an opportunity to vindicate its pastor, or that its pastor has been by any act of mine deprived of an opportunity to vindicate himself.

Truly yours, THEODORE TILTON.

To the above communication I received the following reply from the clerk of the church :

BROOKLYN, May 18, 1874.

DEAR SIR: Your note of the 4th inst., inclosing a letter addressed to Mr. Beecher, Mr. Halliday, and myself, was duly received.

This letter has been read by Mr. Halliday, with whose concurrence it has been submitted to the Examining Committee; and we all deem its contents to present a question which should be decided by that Committee, and which should not be submitted to the pastor of the church, to whom, therefore, the letter has not been shown, though he has been advised of its substance.

Having consulted the members of the Committee, I am informed by them that they see no reason for accepting your proposition, or even laying it before the church.

Whatever view may be taken of the case by others, the Examining Committee and the church have seen no necessity for vindicating any member of the church from charges which no one has made, and the church has never in the twenty-seven years of its history adopted such a course. No one can, therefore, hold you responsible for the loss of an opportunity to the church to do that which it never yet has done, and probably never will do.

We do not understand your letter as implying that you have any charges to make, but to the contrary. If the Committee had so understood it, they would have readily entertained and fully investigated them.

It is proper to add that your name was dropped from the roll, not simply because of the statements made by you after charges had been preferred against you, but because months, if not years, before any charges were made you distinctly stated to various officers and members of the church that you had permanently abandoned your connection with it, thus bringing yourself expressly within the terms of our rule upon the subject.

Yours truly,

THOMAS G. SHEARMAN.

Mr. Theodore Tilton.

As the above communication by Mr. Shearman seemed to bear no official, but only a private signature, I addressed to him the following note :

174 LIVINGSTON-ST., BROOKLYN, May 23, 1874.

MR. THOMAS G. SHEARMAN, Clerk of Plymouth Church.

SIR: My recent communication addressed to the pastor, the associate pastor and the Clerk of Plymouth Church is acknowledged by you in a note which you seem to have signed merely as a private individual, and not as an officer of the church.

I call your attention to the fact that I did not address you in

your private capacity, but solely as the Clerk of Plymouth Church.

I therefore respectfully request to be informed by you, definitely and in writing, whether or not I am at liberty to regard your letter as an official reply to mine.

Yours truly,

THEODORE TILTON.

Mr. Shearman's reply was as follows :

81 HICKS-ST., BROOKLYN, May 29, 1874.

DEAR SIR: In reply to your inquiry whether my letter of 18th inst. was an official answer to yours of the 4th inst., I beg to say that I did not feel at liberty, without the express authority of the church itself, to sign that letter as its clerk.

In so far as the letter stated that your proposition of May 4 was declined, it was official; since as clerk of the church I declined then, and decline now, to lay the proposal before the church itself, holding myself responsible to the church for so doing.

The remainder of the letter of 18th inst. must be regarded as my individual statement of what I believe to be the unanimous opinion of the officers of the church.

Your obedient servant, THOMAS G. SHEARMAN.

Mr. Theodore Tilton.

It will thus be seen that Mr. Shearman, in answer to my inquiry, characterizes his previous letter to me as partly official and partly unofficial, though how he could originally have expected me to draw the dividing line between its two parts without this subsequent explanation I am at a loss to understand. But the official portion of his letter (now that it has been pointed out to me) is sufficient to answer your query, "When did Mr. Tilton cease to be responsible to the Plymouth Church?" I respectfully submit that, setting aside all previous cavils and technicalities concerning the church roll, I may be fairly said to have ceased my responsibility to Plymouth Church when the clerk of that church officially informed me that my voluntary offer to return and be tried was officially declined.

IV. In your five essays you were led, through ignorance of the facts, to make several other erroneous and injurious statements concerning my case; but the corrections and explanations which I have already given will of themselves correct the others.

It now remains for me to give you some reasons why I have been prompted, after years of reticence, to lay before you the grave matters contained in this communication. Nothing could induce me to make my present use of the foregoing facts, except the conviction which the events of the last year, and particularly of the last half year, have forced upon my mind that Mr. Beecher, or his legal and other agents acting in his interest and by his consent, have shown themselves willing to sacrifice my good name for the maintenance of his. I have come slowly to this judgment—more slowly than my personal friends have done; but that I am not mistaken in it, you shall see by a few illustrative instances :

1. I have already shown you how the church, at a public meeting, on Friday evening, October 31, 1873, by an official document which was published the next morning in every leading journal in New York, gave the public falsely to understand that I had been cited to answer charges, when I had really been requested not to answer them;—a piece of ecclesiastical misrepresentation which was the more grievous to me because it was subsequently accepted by the Council as authentic, and because it is still widely believed by the public.

2. Mr. Beecher's journal, *The Christian Union*, published this official falsehood to a wide circle of readers, and took no notice of the correction which I addressed at the time in a brief note to the Council. Let me ask you to weigh the peculiar gravity of this omission by that journal. My case, as presented to the Council by the two protesting churches, was based by them, not on any private or accurate knowledge of the facts, but solely on the published misstatements of those facts by Plymouth Church. I was described by the two churches to the Council as follows :

"Specific charges of grossly un-Christian conduct are presented against him by a brother in the church, to which charges he declines to answer," etc.

You will remember that I promptly addressed to you a reply to the above, in which I used the following explicit words:

"Gentlemen of the Council, every man among you knows that I did not decline to answer."

You, as Moderator of the Council, courteously gave me the ecclesiastical reasons why my letters could not be officially laid before that body; but can you give me any honorable reason why my defense should not have been published in *The Christian Union*? If every other American journal should be destroyed, and only the files of *The Christian Union* should remain, that journal's report of my case would represent me as a culprit, first, who had slandered a clergyman; next, who had been summoned before the church to answer for this calumny; next, who had evaded this summons by resorting to the safe shelter of non-membership; and last, who on account of this moral poltroonery, had been dropped from the roll. Such is the record which Mr. Beecher's journal contains of my case, up to date.

3. During the Council, and when there seemed a probability that Plymouth Church would receive condemnation and be disfellowshipped by the neighboring churches, Mr. Beecher inspired a message from his church to the Council, closing with these words:

"We hold that it is our right, and may be our duty, to avoid the evils incident to a public explanation or a public trial; and that such an exercise of our discretion furnishes us no good ground for the interference of other churches, *provided we neither retain within our fellowship, nor dismiss by letter, as in regular standing, persons who bring open dishonor upon the Christian name.*"

This adroit insinuation against me is what you, as Moderator of the Council, know to have been the turning point in the fortunes of Plymouth Church before that tribunal. The Council's verdict borrows almost these identical words. It says: "The accused person has not been retained in the church, nor commended to any other church." You, too, quote these words—borrowed thus doubly from the church's plea and from the Council's verdict—and you then logically say, "Therefore the abnormal method in which the charges against him (me) were disposed of was overlooked."

In other words, the Council, on reading the above excusatory petition sent up to it by Plymouth Church, found in it the one and only ground for retaining that church within the Congregational fellowship; and this one and only ground was because Mr. Beecher's final appeal to the Council represented me as a person who had neither been retained in his church, nor been recommended to any other, but who was dropped from the roll for bringing "dishonor upon the Christian name." This document—constituting Plymouth Church's ungenerous defense before the Council—was accepted by you in good faith, and has since led you to point against me the following cruel words:

"The Plymouth Church," you say, "made it known that they were no longer responsible for the dishonor which he has brought or may bring on the name of Christ. They dropped him from the roll of the church. In one word, they excommunicated him, for such a dropping from the roll was excommunication from the church."

You never could have uttered the preceding injurious words against me had not Mr. Beecher and his church-agents given you the materials for so doing by ingeniously putting before the Council a document which you, as Moderator, interpreted as being only another way of Plymouth Church's saying that I had brought dishonor on the Christian name, and had therefore been excommunicated.

Do not misunderstand me. I will not say that, in my unsuccessful management of this unhappy scandal, I have brought no "dishonor on the Christian name;" the one name which, of all others, I most seek to honor. With infinite sorrow I look back

through the last few years, and see instances in which, by the fatality of my false position, I have brought peculiar "dishonor on the Christian name;"—all which I freely acknowledge, and hope yet to repair. But I solemnly aver—and no man shall gainsay me—that the reason why Plymouth Church avoided an investigation into the scandal with which I was charged, was not because I, but another man, had "brought dishonor on the 'Christian name.'" And yet this other person, a clergyman, permitted his church to brand me before the Council with an accusation which, had I been in his place and he in mine, I would have voluntarily borne for myself instead of casting on another.

4. I will adduce a further instance by a quotation from a letter which I had occasion to address to Mr. Beecher, dated May 1, 1874:

HENRY WARD BEECHER.

SIR: Mr. F. B. Carpenter mentions to me your saying to him that under certain conditions, involving certain disavowals by me, a sum of money would or could be raised to send me, with my family to Europe, for a term of years.

The occasion compels me to state explicitly that so long as life and self-respect continue to exist together in my breast, I shall be debarred from receiving, either directly or indirectly, any pecuniary or other favor at your hands.

The reason for this feeling on my part you know so well, that I will spare you the statement of it.

Yours truly,

THEODORE TILTON.

5. Take another instance. You will perceive that in Mr. Shearman's letter, given above—the letter officially declining my offer to return to the church to be tried—he says, under date, May 18, 1874:

"Your note of 4th inst., inclosing a letter addressed to Mr. Beecher, Mr. Halliday and myself was duly received. *This letter has been read by Mr. Halliday, with whose concurrence it has been submitted to the Examining Committee.*

And yet, a month and a half after Mr. Halliday saw this letter, and a month after Mr. Shearman had officially replied to it, *The Brooklyn Union* of June 19th, contained the following singular statement, by a reporter who visited Mr. Halliday:

"In an extract," says *The Union*, "from a letter written to *The Chicago Tribune*, it is stated that Mr. Tilton had addressed a note to the 'Trustees of Plymouth Church.' *The Tribune's* correspondent declares that Mr. Tilton 'not only expresses his willingness, but desires to answer any summons, as a witness, during the next thirty days.' A *Union* reporter (Mr. Tilton not being accessible) called on Rev. Mr. Halliday to-day, and, upon presenting the extract to him, was assured that the person who corresponded with the *Chicago Tribune* must have been misinformed. The very fact of his stating that the letter was addressed 'to the Trustees of the Church,' he said, 'was an absurdity.' The Trustees only attended to temporalities of the church. If Mr. Tilton had written such a letter, of which, however, he had no knowledge, it would have been either addressed to the Church, to its pastor, or to some member or members. At the last Friday evening meeting no such letter had been presented for consideration, and he was certain none had since been received, although he must say he had been absent in Massachusetts about a week. He added that he had reason for believing that Mr. Tilton felt a little sore about what Rev. Mr. Bacon had said of him. But whether he would take to writing letters about it he couldn't say.

And yet Mr. Halliday, according to Mr. Shearman's testimony above given, had read my letter forty days before thus denying that he had ever seen or heard of it.

A similar statement to the above appeared in the *Brooklyn Eagle*, at the same time (June 20), as follows:

"The Trustees of Plymouth Church deny that Theodore Tilton has addressed a letter to them, offering himself as a witness, and expressing a desire to answer certain charges against Mr.



Beecher, during the next thirty days. They say that the whole story is false from beginning to end."

The above are recent specimens—not solitary or unique—of the manner in which Mr. Beecher's agents have not hesitated to use the Brooklyn press, on numerous occasions, to misrepresent and pervert my case to the community in which I reside, and to the public at large.

VI. Furthermore, I regret to point to you the evidence that Plymouth Church, or rather the attorney who now acts as its clerk, is attempting to make up a false but plausible record concerning this case, for the purpose of appealing to it in future to my disadvantage. It was to this end that Mr. Shearman ingeniously incorporated in his letter to me dated May 18, 1874, the following words:

"We do not understand your letter as implying that you have any charges to make, but the contrary. *If the Committee had so understood it, they would have readily entertained and fully investigated them.*"

The manifest object of the above record is to enable the church to say, a year or five years hence, that if I ever had any charges to make against Mr. Beecher, the church had long ago given me an abundant opportunity to make them. Mr. Shearman is still more bold in his communication to *The Independent*, dated June 18, 1874. He therein says of the church:

"Its officers have, in the proper way, without parade, *given every facility for investigation that could reasonably be desired, even by the most captious critics.*"

The above statement by Mr. Shearman is made in a letter which was put forth by him ostensibly in my interest, and which I am already accused of having inspired. This leads me to disavow the declaration which I have last quoted as insincere and at variance with the truth.

VII.—Not to multiply instances needlessly, there is one other to which my self-respect compels me to allude with painful explicitness. In your New Haven speech you characterized Mr. Beecher as the most magnanimous of men, and in the context referred to me as a knave and dog. You left the public to infer that I had become in some despicable way the creature of Mr. Beecher's magnanimity. Early in April last I called Mr. Beecher's attention to the offensiveness and injuriousness of your statement, and informed him that I should insist on its correction either by him or me. In order to provide him with an easy way to correct it, involving no humiliation to his feelings, I addressed to you the following letter:

BROOKLYN, April 3, 1874.

Rev. Leonard Bacon, D.D.:

MY DEAR SIR: I have just been reading *THE TRIBUNE's* report of your Yale speech on the Brooklyn Council, in which occurs the following paragraph:

"Another part of my theory is that Mr. Beecher's magnanimity is unspeakable. I never knew a man of a larger and more generous mind. One who was in relations to him the most intimate possible, said to me, 'If I wanted to secure his highest love, I would go into a church meeting and accuse him of crimes.' This is his spirit. But I think he may carry it too far. A man whose life is a treasure to the Church Universal, to his country, to his age, has no right to subject the faith in it to such a strain. Some one has said that Plymouth Church's dealing with offenders is like Dogberry's. The comparison is apt: 'If any one will not stand, let him go, and gather the guard, and thank God you are rid of such a knave.' So of Lance, who went into the stocks and the pillory to save his dog from execution for stealing puddings and geese. I think he would have done better to let the dog die. And I think Mr. Beecher would have done better to have let vengeance come on the heads of his slanderers." \* \* \*

Setting aside the satire and mirth, if there be any criticism directed toward me in these words in sobriety and earnestness, then I beg you to do me the following act of justice:

Please forward to Mr. Beecher the letter I am now writing, and ask him to inform you, on his word of honor, whether I

have been his slanderer—whether I have spoken against him falsely—whether I have evaded my just responsibility to Plymouth Church—whether I have treated him other than with the highest possible fairness—and whether he has not acknowledged to me, in large and ample terms, that *my* course towards *him* in this sorrowful business has been marked by the magnanimity which you apparently intimate has characterized *his* towards *me*.

If you write to Mr. Beecher as I have indicated, I will thank you for a line as the words or substance of his reply. With great respect I am truly yours,

THEODORE TILTON.

In reply to the above letter you sent me the following:

NEW HAVEN, April 10, 1874.

Theodore Tilton, Esq.:

DEAR SIR: Not being in Mr. Beecher's confidence, I have doubted what I ought to do with your letter written a week ago. I was not—and am not—willing to demand of him that he shall admit me to his confidence in a matter on which he chooses to be reticent. But as the letter seems to have been written for *him* quite as much as for *me*, I have now sent it to him without asking or expecting any reply.

\* \* \* \* \*

With the best wishes for your welfare, I am, yours, truly,  
LEONARD BACON.

It is now between two and three months since I received from you the foregoing letter, and, as I have not heard that Mr. Beecher has made a reply, either to you or me, I am at last forced to the disagreeable necessity of borrowing a reply in his own words, as follows:

BROOKLYN, Jan. 1, 1871.

I ask Theodore Tilton's forgiveness, and humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other breasts that would ache. I will not plead for myself. I even wish that I were dead.

\* \* \* \* \*

H. W. BEECHER.

The above brief extract from Mr. Beecher's own testimony will be sufficient, without adducing the remainder of the document, to show that I have just ground to resist the imputation that I am the creature of his magnanimity.

In conclusion, the common impression that I have circulated and promoted scandals against Mr. Beecher is not true. I doubt if any other man in Brooklyn, during the whole extent of the last four years, has spoken to so few persons on this subject as I have done. A mere handful of my intimate friends—who had a right to understand the case—are the only persons to whom I have ever communicated the facts. To all other persons, I have been dumb—resisting all questions, and refusing all explanations.

If the public have heretofore considered my silence as inexplicable, let my sufficient motive be now seen in the just forbearance which I felt morally bound to show to a man who had sent me a written and absolute apology.

But my duty to continue this forbearance ceased when the spirit of that apology was violated to my injury by its author or his agents. These violations have been multitudinous already, and they threaten to multiply in the future—forcing me to protect myself against them in advance;—particularly against the cunning devices of the Clerk of the church who, acting as an attorney, appears to be conducting this business against me as if it were a case at law.

Had the fair spirit which I had a right to expect from Plymouth Church—at least for its pastor's sake—been shown toward me, I would have continued to rest in silence on Mr. Beecher's apology, and never during the remainder of my life would I have permitted any public word of mine to allude to the offense or the offender.

But the injurious measures which the author of this apology has since permitted his church to take against me with-

out protest on his part—measures leading to the misrepresentation of my case and character by the Church to the Council, and by the Council to the general public—involving gross injuries;—all these indictments, conjoining to one end, have put me before my countrymen in the character of a base and bad man—a character which, I trust, is foreign to my nature and life. Under the accumulating weight of this odium—unjustly bestowed on me—neither patience nor charity can demand that I keep silent.

In your capacity as ex-Moderator of the Council, and as its chief expositor, you have labeled the theme of your animadversions “the celebrated case of Theodore Tilton.” You have declared that “the transaction with all its consequences belongs to history, and is in every way a legitimate subject for public criticism.” If, therefore, your estimate of the historic importance of the case is true (though I hope it is not) I now finally appeal to you as its chief historian not to represent me as playing an unmanly or dishonorable part in a case in which, so far as I can yet see, I have failed in no duty save to myself.

Truly yours, THEODORE TILTON.

Mr. Evarts—Before we adjourn will you allow me to suggest to the counsel that we would like to see, on the termination of the recess, the original papers which are substitutes for those just read?

Mr. Fullerton—That will be done unless the illness of Mr. Morris continues.

Mr. Evarts—If your Honor please, the jury, perhaps, will not like to have their dinner hour curtailed quite as much as by the extension of this reading.

Judge Neilson—Will you say a quarter after two o'clock?

Mr. Evarts—A quarter after two o'clock.

Judge Neilson, to the jury—Please be in your seats, gentlemen, at a quarter after two o'clock.

#### SUPPRESSION OF THE BACON LETTER SOUGHT.

The Court met at 2.15 p. m., pursuant to adjournment. Francis D. Moulton's direct examination was resumed.

Mr. Fullerton—Before the recess you stated that you promised Mr. Beecher, if possible, to prevent the publication of the Bacon letter. If you used any efforts in that direction, you will please now state them? A. I went to *The Golden Age* office after the—

Mr. Evarts—We don't understand that to be admissible.

Q. Did you make efforts in pursuance of your promise to Mr. Beecher to prevent the publication of that letter? A. I did.

Mr. Evarts—That we object to.

Mr. Beach—Did you apprise Mr. Beecher of the efforts you made? A. Yes, Sir, I told him what I had done.

Mr. Fullerton—What did you report to Mr. Beecher that you had done in that direction?

Mr. Evarts—We want to get it right.

Mr. Fullerton—We want to get it right.

Mr. Evarts—Yes, but we don't want to get wrong first.

Mr. Fullerton—I have a right to show what he did and what he reported.

The Witness—I said to Mr. Beecher that I went to *The Golden Age* office the day after the letter had been read to me to suggest further alterations to Mr. Tilton—charges that I deemed necessary; and I said to him that after I had made these suggestions to Mr. Tilton, he told me that the paper had gone to press.

I told Theodore that I thought—I said to Theodore that the letter ought not to be published, that I had told him that the night that he had read the letter to me in the presence of witnesses, and that I had said that to him in the presence of witnesses, and that I had said the same thing to him the day after I had heard the letter read; that he insisted on its publication; and I said to Mr. Beecher, “I have done the best I could. I have procured the introduction in this letter of the word ‘offense’ in place of the words ‘that he has committed against me and my family a revolting crime.’”

Q. Had you done, previous to that conversation with Mr. Beecher, what you reported him to have done? A. Certainly.

Q. Take the Bacon letter and point out specifically the alterations which you suggested and which were made in pursuance of your suggestion? A. [Reading from the Bacon letter.] “In producing to your inspection some hitherto unpublished papers and documents in this case, I need first to state a few facts in chronological sequence, sufficient to explain the documentary evidence which follows: 1. After I had been for fifteen years a member of Plymouth Church, and had become, meanwhile, an intimate friend of the pastor, knowledge came to me in 1870 that he had committed against me an offense which I forbear to name or characterize.” It read, Sir, in the original manuscript, if I remember correctly—the substance of it I do remember correctly—“knowledge came to me in 1870 that he had committed against me and my family a revolting crime.”

Mr. Evarts—Is the original manuscript in existence? A. I don't know, Sir, whether it is or not.

Mr. Evarts—We would like to have that, if it is.

Mr. Fullerton—Now, if any other alteration was made, please state it. A. Well, sir, I forget the alterations. Perhaps if I should read the letter carefully—

Mr. Evarts—He has not testified to any but this one.

Mr. Fullerton—Well, Mr. Evarts, I did not say he had. I only asked him, if any other alterations were made, now to state them.

Mr. Evarts—No, this is the point: This matter he has stated as having been a subject talked about between him and Mr. Beecher, but this is the only alteration that he has spoken of as being the subject between him and Mr. Beecher.

Mr. Fullerton—I still do not see the occasion of the interruption.

Judge Neilson—You might avoid the objection by asking him whether he reported any other alteration to Mr. Beecher, and, if so, what?

Mr. Evarts—Exactly.

Mr. Fullerton—That is true. I might incorporate two questions into one, but I do not know that that is absolutely necessary in the trial of a cause.

Judge Neilson—I think the testimony must be limited to the alterations that he reported to Mr. Beecher.

Mr. Fullerton—I propose to limit it.

Mr. Evarts—One he has testified to.

Mr. Fullerton—I am aware of that. It is not worth while to indicate to me what he has testified to. I understand it perfectly well. I don't want interruption for the sake of interruptions.



Mr. Evarts—No.

Mr. Fullerton—Now, if there was any other alteration made in that document before it was printed, I want you to point it out? A. I did tell Mr. Beecher that I had suggested other alterations. I don't remember what they are now, but I told him what they were.

Q. What occurred subsequently to that in reference to the Bacon letter? Any conversation you may have had with Mr. Beecher in regard to it, you may now detail, if you please? A. Mr. Beecher said that the Bacon letter was a dead shot; I remember that expression.

Q. In what conversation did he make use of that term? A. When he came to talk to me about—when he came and said to me—asked me what reply I thought it was best to make to the Bacon letter, if any.

Q. And what reply did you counsel? A. I said to Mr. Beecher, "I recommend the same policy that we pursued in regard to the Victoria Woodhull letter or document—silence."

Q. Was any other course proposed? A. Yes, Sir; I submitted to him a paper which I had dictated to Frank Carpenter, and I said: "Mr. Beecher, if anything is said I deem it most judicious that this should be said," and I read to him that which I had dictated to Mr. Carpenter.

Q. In whose handwriting was that paper? A. That paper was in Carpenter's handwriting. Mr. Beecher asked me for a copy of it.

Q. Did you give him a copy of it? A. I did give him a copy of it.

Q. In whose handwriting was the copy? A. It was in my handwriting.

Q. Look at the paper now shown you and say whether it is the original of that paper? A. Yes, Sir; that is the original.

Q. What occurred between you and Mr. Beecher with reference to this proposed card after the interview of which you have just spoken? A. Well, I have not finished that interview.

Q. Well, please finish it? A. I said Mr. Beecher asked me for a copy of it. I gave him a copy of it, with an alteration or two in it, and he said that he would make a copy of it in his own handwriting—make a copy of that copy in his own handwriting, and submit it to some of his friends.

Q. Did he afterwards state whether he had submitted it to his friends? A. I don't remember whether he did or not, Sir.

Q. What occurred with reference to that card at any time after that? A. I met Mr. Beecher on July the 5th, I think, and I said, "Well, Mr. Beecher, you have not uttered from your pulpit, or anywhere given utterance to the words that I prepared for you; at least I have not seen any such expressions;" and he said, "No, you advised silence particularly." "Yes," I said, "I advised silence, but I think you have had a good opportunity to make that expression;" and I said, "At the Friday evening prayer-meeting your church seemed to be in entire sympathy with you, and I think you might have availed yourself of that occasion to have made that expression." And he said, "Well, I am not to blame for that. You advised silence, and I have followed the course you advised."

Mr. Fullerton—I now offer the paper in evidence.

The Witness—I had a subsequent conversation with Mr. Beecher about it, and I told him that I had seen Gen. Tracy concerning a reply to the Bacon letter, and that I had asked Gen. Tracy if he had submitted the paper to him, and I said to Mr. Beecher that Mr. Tracy's reply was that he had seen a paper in which he thought he detected my handiwork, and that Gen. Tracy had said to me that the words "I have committed no crime," really said nothing in denial of the fact as alleged by Mr. Beecher against—or as to the fact between Mr. Tilton and Mr. Beecher—or Mr. Beecher and Mrs. Tilton's relations; that as nearly as I could remember the words he said, "I have committed no crime," did not mean anything, because adultery was no crime under the common law. That is as nearly as I could repeat it, and I said to him that I had told Gen. Tracy that I did not think that was a good objection; that I thought the community would accept that card as a distinct denial—that utterance, rather; that that utterance would be accepted by the community as a distinct denial, and that it ought to be made, or some such utterance should be made, since Beecher assented—since Mr. Tilton assented to peace, since that utterance was made, or if silence was kept.

Q. You are now relating the conversation that you had with Mr. Beecher, in which you repeated the conversation that you had with Mr. Tracy? A. Precisely.

Q. And did you have that conversation with Mr. Tracy as you repeated it to Mr. Beecher? A. I did.

Mr. Fullerton—I will now read this.

Mr. Tracy—There has been an alteration in this.

The Witness—Two unessential changes.

Mr. Tracy—The one he gave to Mr. Beecher ought to be the one produced.

Mr. Evarts—Let us understand about it. I hold in my hand what is considered as an original paper, in a certain sense. [To the witness.] It is a paper in the handwriting of Mr. Carpenter, as I understand it? A. Yes, Sir.

Q. It was written by him from your dictation? A. Yes, Sir.

Q. That is, he wrote it down from what you said to him? A. Yes, Sir.

Q. This was shown to Mr. Beecher? A. I read it to him.

Q. Well, read it to him? A. Yes, sir; and I made a copy of it.

Q. And made a copy of it which was an exact copy of it? A. No; it was with one or two unessential alterations in the grammatical construction; that is all the words.

Q. That we don't know much about? A. No.

Mr. Evarts—This paper was shown to Mr. Beecher, and this paper can be read. Whenever the paper given to Mr. Beecher is to be read, why, that will have to be produced. It was changed.

Mr. Fullerton—I read as follows:

This church and community are unquestionably and justly interested through the recent publication by Theodore Tilton in answer to Dr. Leonard Bacon, of New-Haven.

It is true that I have committed an offense against Theodore Tilton, and, giving to that offense the force of his construction, I made an apology and reparation such as both he and I declared full and necessary. I am convinced that Mr. Tilton has been goaded to these violent expressions or mis-

understandings of my position towards him. I shall never be a party to the reopening of this question, which has been honorably settled as between Theodore Tilton and myself. I have committed no crime; and if this society believes that it is due to it that I should reopen this already too painful subject, or resign, I will resign. I know, as God gives me the power to judge of myself, that I am better fitted to-day, through trials and chastening, to do good, than I have ever been.

[Marked "Exhibit No. 34."]

Q. At whose suggestion, if at any one's, did you submit that paper to Mr. Tracy? A. What is the question?

Q. At whose suggestion, if at any one's, did you submit that paper to the consideration of Mr. Tracy? A. My own.

Q. And what was said by Mr. Beecher in regard to that act? A. He approved of it.

Q. What did he say, and what did you say to him? A. I said to him that I had submitted the paper to Mr. Tracy, and he said nothing further with regard to it; I don't remember that he made any reply.

Mr. Evarts—One moment, Mr. Fullerton. Isn't there some misunderstanding? I understand Mr. Moulton as testifying that he asked Mr. Tracy if Mr. Beecher had submitted it to him.

Judge Neilson—Mr. Tracy told him that he had seen the paper.

Mr. Fullerton—That is not inconsistent.

Mr. Evarts—I am only asking to get at the fact. Now I understand him to say that he submitted the paper? A. That I submitted the paper to Mr. Tracy?

Q. Yes, Sir. A. I asked him if he had seen any paper.

Mr. Evarts—Your Honor sees that I am correct about it.

Judge Neilson—The counsel accept your correction.

Mr. Fullerton—Go on and state what further was said, if anything, to Mr. Beecher in regard to that paper? A. I said that I had asked Mr. Tracy whether—I repeated the exact conversation as nearly as I could to Mr. Beecher that I had had with Mr. Tracy, and I told him what Mr. Tracy had said, and that I did not consider his objection was a good one, that was all.

Q. Had Mr. Beecher been in any way connected with this controversy prior to that time? A. He had; yes, Sir.

Q. And is that a reason why you suggested Mr. Tracy's name in that connection? A. That is the reason that I went to Mr. Tracy; yes, Sir; one of the reasons.

Q. When did Mr. Tracy's connection with the case first commence? A. After the Victoria Woodhull publication.

Q. The Autumn of 1872, that was, I think? A. Yes, Sir, November, 1872.

Q. Under what circumstances did he become connected with it? A. My partner, Mr. Woodruff, after the publication of the Victoria Woodhull story, came to me and said that I was severely criticised for my position with regard to it, and that several of his friends and of my friends thought that I should say something, make some statement with regard to it, and I said I didn't want to do it.

Mr. Evarts—That has nothing to do with this, if your Honor please.

Mr. Fullerton—I shall connect them all with Mr. Beecher.

Mr. Evarts—The Judge has indicated several times that the best way is to begin with Mr. Beecher's connection.

Judge Neilson—I think so. I think you could have him state what he reported to Mr. Beecher that occurred between him and Mr. Woodruff without repeating the conversation.

Mr. Fullerton—I can do it in that way, and I certainly will do it in that way if your Honor so instructs me, but it is not the natural order of events, and I think we are entitled, on our side, to all the force and effect growing out of the natural statement of the events as they took place.

Judge Neilson—You expect to connect him?

Mr. Fullerton—I think your Honor will give me the credit for intending in good faith to connect Mr. Beecher with all that I prove by Mr. Moulton with reference to this matter.

Judge Neilson—If you are so advised you can go on.

Mr. Fullerton—I do not want you, Mr. Moulton, to state anything that was said to you that you did not communicate to Mr. Beecher.

Mr. Evarts—If he is asked the question what he did communicate to Mr. Beecher we will take it.

Mr. Fullerton—You may take it, I think, in another way.

Mr. Evarts—I think not.

Mr. Fullerton—You may.

Mr. Evarts—We will except to any other way.

Mr. Fullerton—I don't want to put the cart before the horse.

Mr. Evarts—You may put the cart and never bring the horse, and that we don't want. [Laughter.]

Mr. Fullerton—You don't want either cart or horse. [Laughter.]

Mr. Evarts—I want both, or not have either.

Mr. Fullerton—We mean to have our horse go first if possible, and you will see what he draws into the case.

Judge Neilson—You see, gentlemen, how much a little wit costs—a very little wit. [Laughter.]

Mr. Fullerton—Well, my friend has not exhausted his store yet. I want to prove by this witness what was said to him which he afterwards communicated to Mr. Beecher, and I think there will be no misapprehension about it all. I do not design to prove anything that was said to him that was not communicated to Mr. Beecher.

Judge Neilson—Well, in the mean time, it is just as well, and of course it is more correct, to ask him what he communicated to Mr. Beecher in respect to his conversation with Mr. Woodruff, and there you have the whole matter.

Mr. Fullerton—I have the whole matter also, if your Honor please, in the question: "State what was said to you which you afterwards communicated to Mr. Beecher?"

Judge Neilson—I think you should take the other course.

#### FUN AT GEN. TRACY'S EXPENSE.

Mr. Fullerton—I will; I will acquiesce very cheerfully. [To the witness.] Now what did you state to Mr. Beecher which had been stated to you?

A. I said to Mr. Beecher that my partner, Mr. Woodruff, was very anxious that I should make some statement with regard to the Victoria Woodhull story.



friends and many of mine, or several of his friends and several of mine, had criticised my position in reference to the story, that they not only criticised me but they criticised the firm, for my relations to the story: and I said to Mr. Beecher that Mr. Woodruff recommended me, under the circumstances, to take counsel in the matter; and I said to Mr. Beecher that I had asked Mr. Woodruff whom he could recommend, and he said that he would recommend Mr. Tracy; and I said to Mr. Beecher that I thought Mr. Tracy was a good man to consult on the subject; that he had a good cool head on his shoulders, and I thought would give good advice; and I said to Mr. Beecher, "If you have no objection, I will consult with Gen. Tracy, but to consult with Gen. Tracy, and to get his best advice upon the subject, it will be necessary to tell Gen. Tracy the truth. If you have no objection, then, I will assent to my partner's wish, and consult with Gen. Tracy," and he said that he had no objection if I thought it was best, and I said that I did not see that I had any other course to pursue; my partner wanted me to do it, and I thought it was necessary to take advice, and that I did not know any better man to consult on the subject than Gen. Tracy. I informed Mr. Beecher afterwards; I said to Mr. Beecher afterwards that I had told my partner that I was willing to consult with Gen. Tracy, and that he had made an appointment with Gen. Tracy, and I had seen Gen. Tracy on the subject of the Victoria Woodhull story.

Q. In company with your partner? A. With my partner, yes, Sir; and I told him what transpired at that interview between Mr. Woodruff, Gen. Tracy and myself.

Q. Now, relate what you told him. A. I said to Mr. Beecher, "I told Mr. Tracy the truth of the matter; I told him the fact in the case as it was, that you had been guilty of sexual intercourse with Mrs. Elizabeth Tilton, and he said, in the presence of my partner, that if that was true it must be concealed at all hazards," and I said that Mr. Tracy said that although he did not recommend lying, this was one of the cases in which lying was justifiable. [Laughter.] And I said that my partner replied to that that he would not consent that I should publish a card with my name affixed to it denying that which was the truth; he would not allow that; and that Mr. Tracy had said, "Why can't Moulton and Tilton go to Europe for a couple of years?" I also informed Mr. Beecher afterwards, and said to him that we had had a consultation at our house—at my house—in my study, between Gen. Tracy, Mr. Woodruff and myself, and between Gen. Tracy, Mr. Woodruff, Mr. Tilton and myself, and that at that interview I told Mr. Tracy again the truth, and had laid before Mr. Tracy the letter of contrition.

Q. Of January, 1, 1870? A. January 1, 1870, yes, Sir; that I laid before Mr. Tracy that letter.

Q. 1872? A. 1871, I mean; January 1, 1871; I said that I had told him the truth with regard to the whole matter, and that no conclusion at that interview was arrived at; that we had tried to devise a reply to the Victoria Woodhull story, but had not at that interview succeeded; and I told him that I had communicated the fact to Mr. Tilton, that I had told Gen. Tracy the fact in the case, and that Theodore

Tilton had denounced me for so doing, and had said to me that I had no business to reveal the guilt of Elizabeth to Mr. Tracy without his consent, and that I had pacified Mr. Tilton by telling him that I had considered it my duty to take the best advice I could on the question, not only for Mr. Beecher's sake—that I did not consult Mr. Tracy as Mr. Beecher's friend at all, particularly, but as the friend of all the parties, as a man capable of advising with reference to that which had better be done. I told him that after a while Theodore was willing to see Gen. Tracy, and that he went up stairs and did see Gen. Tracy in the presence of Mr. Woodruff and myself; and I told him that the first question that Mr. Tilton—the first sentence that Mr. Tilton, or about the first sentence that Mr. Tilton uttered, after the usual salutations between gentlemen was, "Mr. Tracy, I do not understand the etiquette of your profession, but as I understand it since these facts are to be laid before you, a part of which have been laid before you—or all the fact and part of the papers have been laid before you—I understand that you will not under any circumstances, in case Mr. Beecher and myself come into collision, act as his counsel;" and that Mr. Tracy had said, "Certainly not."

Q. What reply, if any, did Mr. Beecher say to this? A. Mr. Beecher said to me that he was glad that Theodore had assented to that conference, that he hoped some good would come out of it, but that he did not see himself what reply could be made, and that he considered, perhaps, that the policy of silence was the best for all concerned.

Q. Is that all that took place that you can now remember with reference to that branch of the case? A. I told Mr. Beecher that Mr. Tracy had said to Mr. Tilton in the presence of Mr. Woodruff and myself at that interview that the interest of all concerned demanded the denial of that story. That is all that I remember.

Mr. Evarts—You mean of the Woodhull story? A. Of the Woodhull story; yes, Sir.

Mr. Fullerton—Then we will return to 1874 again and take up the narrative where we left it off. Do you recollect a meeting in the month of July of that year, where Mr. Beecher and yourself and Mr. Robinson were parties? A. You have reference to July the 5th?

Q. July the 5th? A. Yes; I remember that.

Q. State where that meeting occurred. A. Between Mr. Robinson, Mr. Beecher and myself?

Q. Yes, Sir. A. After Mr. Beecher and myself had left the house we walked through Remsen-st. around into Montague Terrace, and there met Mr. Robinson, and after some remarks which I do not distinctly remember, between Mr. Robinson and Mr. Beecher, Mr. Beecher put his hand over my shoulder and said, "Mr. Robinson, this is the best friend God ever raised up to a man. If it had not been for him I do not think I would be alive to-day."

Q. Which of the Mr. Robinsons? A. Mr. Jeremiah P. Robinson.

Q. State whether Mr. Beecher knew from you at that time that Mr. Robinson had been put in possession of these secrets?

A. Yes, Sir. I had told him that I had told both Mr. Woodruff and Mr. Robinson.

Q. Your two partners? A. Yes, Sir.

Q. Which Woodruff? A. Franklin Woodruff.

Q. Which Robinson? Jeremiah P. Robinson.

Q. When did you tell Mr. Beecher that you had thus communicated the secret to those two gentlemen? A. Oh! it was quite early, Sir; I don't remember.

Mr. Evarts—He did not use the word "secret."

The Witness—It was 1870, I think, I told him—1871, rather.

Q. That you told Mr. Beecher? A. Yes, Sir.

Q. And what did you tell him? A. I told him that my partners were very anxious to know what was going on; I told him that I had consulted with Mr. Robinson in the very beginning in regard to the letter of January 1, 1871, to Mr. Bowen.

Mr. Evarts—Tilton's letter? A. Yes, Sir; and that Mr. Robinson had advised very kindly that Mr. Tilton carry his own case entirely out of that letter, and not appear in it.

Mr. Fullerton—What did you tell Mr. Beecher you had told Robinson? A. I told him that I had told him the fact concerning his relation between Elizabeth Tilton and himself.

Q. What did you tell him that you had told Mr. Woodruff, your other partner? A. The same.

Q. Look at the letter now shown you and say in whose handwriting it is [handing witness a letter]? A. Mr. Beecher's, Sir.

Q. Was it received by you? A. Yes, Sir.

Q. And about its date? A. Yes, Sir.

Q. Before reading that letter I want to ask you whether at any time up to its receipt Mr. Beecher had said anything to the effect that you had failed to serve him faithfully or properly? A. No, Sir.

Q. Had he criticised in any way your conduct in the management of the affair in his behalf? A. No, Sir.

Mr. Fullerton [reading the letter]:

PEEKSKILL, July 7, 1873—Monday, 7 p. m.

MY DEAR FRANK: I have just arrived. I called Saturday evening to learn that you would not return till Monday. Can you come up Tuesday, or Wednesday, or Thursday? Let me know by letter or telegram. The trains are—a. m., 8, 9:10, 10, 10:45; p. m., 2, 4, 4:15, 5:30, 6:20, and 7. The 4 p. m. is express and good train; if you come in the afternoon you should allow 45 minutes from City Hall to reach Forty-second-st. station, and about one hour from your store.

I have not seen you since the card. I will take good care of you, and even if others don't think so much of you as I do I will try and make up. My vacation is begun; and am I not glad? Next week we expect company.

The drouth is severe—no real soaking since the last of May, and things are suffering; but yet the country is beautiful. The birds are as good to me as David's harp. I only need some one to talk to, and that one is you.

Come when you can, and, coming or going, believe me, faithfully and affectionately yours,

H. W. B."

(Marked "Exhibit No. 35.")

Q. I want to ask you what card Mr. Beecher referred to in that last letter: "I have not seen you since the card?" A. The card in *The Brooklyn Eagle*, I think it refers to.

Q. That letter bears date July 7th, 1873? A. The card in *The Brooklyn Eagle* of June the 2d, I think it refers to.

Mr. Fullerton—I want to get at the number of that so as to

connect it with that letter. Mr. Pearsall can give you the number of that. It has been read in evidence.

Mr. Pearsall—A card in *The Eagle* of June, 1873?

Mr. Fullerton—Yes, Sir.

Mr. Pearsall—"No. 25," *The Eagle* card, June, 1873.

Mr. Evarts—June 7, 1873. It has not been read yet.

Mr. Fullerton—A copy of it has been read.

Mr. Evarts—The proposed card has not been read. You commenced reading one, apparently from *The Eagle*, and then a question arose.

Mr. Beach—The card as published was read.—June 2, 1873.

Q. Was that card proposed by any one, that you now hold in your hand? A. Yes, Sir; by Theodore Tilton.

Q. Did it come into your possession at the time? A. Yes, Sir.

Q. Under what circumstances? A. From Theodore Tilton.

Q. Did you show it to Mr. Beecher? A. Yes, Sir; I showed it to Mr. Beecher.

Q. And what did he say in regard to it? A. This was the card that he said would kill him if it was published.

Q. Was there any card published just prior to July, 1873, when he wrote you the letter, in which he says, "I have not seen you since the card?" A. Yes, Sir; it was a card with reference to Mr. Bowen's visit to Victoria Woodhull with Mr. Claflin.

Mr. Fullerton—That connects it; that's what I want.

The Witness—Yes, Sir.

Mr. Evarts—We do not understand the card of July 7th, '73, published in *The Eagle* has been read; you commenced reading it.

Mr. Fullerton—Certainly; that is right.

Mr. Fullerton—Look at the paper now shown you, and say in whose handwriting it is? A. Mr. Beecher's.

Q. Addressed to you? A. Yes, Sir.

Q. And did you receive it about the time of its date? A. Yes, Sir.

Mr. Evarts—Is this the letter of July 9?

Mr. Fullerton—Yes, Sir; the letter of July 9, I propose to read.

Mr. Evarts—Try to get the number of July 7.

Mr. Shearman—The stenographer has either omitted some paper which we have entered as an exhibit, or we have put something in as an exhibit which the stenographer has not.

#### CALMING INFLUENCE OF A VACATION.

Mr. Evarts—Well; we will have to correct that somehow.

Mr. Fullerton—[Reading].

THURSDAY EVENING, 9th July, 1873.

MY DEAR FRANK: Why not come on Saturday and spend Sunday? You must get your comfort out of nature and me, and not notice any withholding of countenance elsewhere.

I preach in the village in the morning, but you can lie on the hillside—in peace.

The afternoon and evening will be open for all gracious influences which forests hide or heavens distill. The birds are not yet silent, though their pipes are somewhat feebler. Flowers are burnt, grass withered, grain reapt, grapes not ripe, strawberries gone, blackberries not come, raspberries in good condition and abundant, also water-melons, and, besides, a dam/john of—water!



I want to see you and show you a letter, etc. Do you hear what Bowen is doing? Will he publish? Find out if anything is on hand. Truly yours,

H. W. B.

Send me a line Friday if you shall come, so that I may meet *the train*; otherwise pay your own hack hire."

[Letter marked "Exhibit No. 36.]

Q. [Another paper handed to witness.] In whose handwriting is the letter now in your hand? A. Mr. Beecher's.

Q. Addressed to you? A. Yes, Sir.

Q. Did you receive it about the time of its date? A. Yes, Sir.

Mr. Fullerton—I offer it in evidence. [Reading:]

MY DEAR FRANK: I looked for you on Saturday and received your note this morning—Monday.

Howard writes that T. T. has sent to Mr. Halliday a note announcing that he did not consider himself for two years a member of the church.

There is also a movement to let the other party go to trial, and also to give him an avoidance of trial by some form of letter, I don't know what. I have not been consulted. I do not mean to meddle. It is *vacation*. Governor Claflin and wife, of Massachusetts, will be here this week. I am getting at my writing again—at work on my book. I despaired of finishing it. I am more encouraged now. For a thousand encouragements—for services that no one can appreciate who has not been as sore-hearted as I have been, for your honorable delicacy, for confidence and affection—I owe you so much that I can neither express nor pay it. Not the least has been the great-hearted kindness and trust which your noble wife has shown, and which have lifted me out of despondencies often, though sometimes her clear truthfulness has laid me pretty flat.

I mean to run down some day. Will let you know beforehand, that I may not miss you, for, to tell the truth I am a little heart-hungry to see you: not now, because I am pressed, but because I love you, and will ever be faithfully yours,

HENRY WARD BEECHER.

Peekskill, July 14, 1873.

[Marked "Exhibit No. 37."]

Q. [Paper handed to witness.] In whose handwriting is the paper you now have? A. Mr. Beecher's.

Q. To whom is it addressed? A. To me.

Q. Did you receive it about the time of its date? A. I did.

Mr. Fullerton—I offer it in evidence. [Reading:]

FRIDAY NOON, October 3, 1873.

MY DEAR FRANK: I have this morning got back sound and fresh, and want to send my love to you and yours. I should see you to-morrow, and shall be out of town till evening. God bless you, my dear old fellow!

H. W. B.

[Letter marked Exhibit No. 38.]

Q. [A paper being handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Q. Well, I won't ask to whom it is addressed. Did you receive it from him? A. I did. Yes, sir.

Mr. Fullerton [reading]—25, '73.

MY DEAR VON MOLTKE: I have seen Howard again. He says that it was not "fr." [an abbreviation for "from," I suppose,] from Theodore that Gillkison got the statement, but from Carpenter. Is he reporting that view? I have told Claflin that you would come with Carpenter if he could be found, and at any rate by 9 to-night (to see Storrs), but I did not say anything about Storrs. I sent Mr. Cleveland with my horse and buggy over to hunt Carpenter. Will you put Carpenter on his guard about making

such statements. From him these bear the force of command from headquarters. Yours truly and ever,

H. W. BEECHER.

(Marked "Exhibit No. 39.")

Mr. Beach—It is "25, '73"—marked "May 25th, 1873?" A. That is the date of it, Sir.

Mr. Fullerton—Can you tell when the Von Moltke letter was received? A. May 25th, 1873.

Q. Did you ever see the paper before which you now have in your hand? A. Yes, Sir.

Q. From whom did you receive it? A. From Mr. Beecher.

Q. When? A. About the time that it was written; I forge the date. The date is October 24. I fixed the date of it at on time. I think it was in 1872 or '73, somewhere there. I can fix the date after.

Q. Where were you when he delivered it to you? A. In my house.

Q. What did he say at the time that he delivered that letter to you, in regard to it? A. He said I had better take it: he didn't want any such letter around him.

Q. Did he give any reason? A. It was a dangerous letter he said, to have around.

Q. Do you know the handwriting? A. The handwriting of Mrs. Morse.

Mr. Evarts—Well, this is a letter from Mrs. Morse, addressed to Mr. Beecher, and handed by him to Mr. Moulton. Of course it goes no further in evidence than the fact that such a letter was written by her and received by him.

Mr. Fullerton—Yes, Sir. It is as follows:

"October 21st, 1871.

"MY DEAR SON: You must pardon me for the request I now make. Can you help me in any way by the 1st of November? I am still alone, with no prospect of any one, with a rent of \$1,500 and an income of a thousand; the consequence is, with other expenses, I shall be by the 1st of the month terribly behind hand, as I agreed to pay in monthly installments. I know full well I have no claim upon you in any way, excepting your sympathy for my lonely and isolated condition. If I could be released from the house, I should gladly do so, for I am convinced it is too far out; all who have been to see my rooms say so. My darling spent most of yesterday with me. She said all she had in the way of money was \$40 per week, which was for food and all other household expenses aside from rent, and this was given her by the hands of Annie Tilton every Saturday. If you know anything of the amount it takes to find food for eight people, you must know there is little left for clothing. She told me, he (T.) didn't take any meals home, from the fact she could not get such food as he liked, to nourish his brain, and so he took his meals at Moulton's. Just think of that. I am almost crazy with the thought. Do come and see me. I will promise that the secret of her life as she calls it, shall not be mentioned. I know it is hard to bring it up, as you must have suffered intensely and we all will I fear, till released by death. Do you pray for me? If not, pray do. I never felt more rebellious than now, more in need of God's and human help. Do you know I think it strange you should ask me to call you son? When I have told, darling, I felt if you could in safety to yourself and all concerned, you would be to me all this endearing name. Am I mistaken?—Mother."

[Marked "Exhibit No. 40."]

Mr. Evarts—Is there a date on that last letter—a date by the writer?

Mr. Fullerton—I don't know ; if there is, I read it. Yes, Sir, October 2, '71, is written.

Mr. Beach—No, not on the letter itself.

Mr. Evarts—How do you fix the 1871 ?

Mr. Fullerton—Do you know when you received that letter ? A. I fix the date of the letter, Sir—I cannot fix it in any other way than by referring to the time when Annie Tilton—when Mr. Tilton was giving through Annie Tilton to his wife, an allowance of \$40 a week. I think it was 1871, Sir. I can fix the date before I get through with my testimony, positively.

Q. [Another paper handed to witness] : Where did Mr. Tilton reside in October, 1871 ? A. Livingston street.

Q. One-hundred-and-seventy-four ? A. Yes, Sir.

Q. And where did Mrs. Morse reside at that time ? A. I don't remember the number of the house, nor where.

Q. How ? A. I don't remember just at present, Sir, where.

Q. Did she reside with him ? A. I don't think she did ; no, she did not reside with him.

Q. What paper have you in your hand now ? A. A letter from Mr. Beecher, Sir.

Q. To whom ? A. To me.

Mr. Fullerton—[Reading] Saturday, September, 20th, 1871. [It is out of order, and I am sorry it was not put in its order.] My Dear Friend : I feel bad not to meet you. My heart warms to you and you might have known that I should be here if you love me as much as I do you. Well, it is an inconstant world. Soberly, I should be glad to have you see how hearty I am ; ready for work and hoping for a bright year. I have literally done nothing for three months, but have gone to grass, and things seem almost strange to come back among men and see business going on in earnest. I will be here on Monday at 10.

I am, my dear Frank, truly and gratefully yours,

HENRY WARD BEECHER.

[Letter marked "Exhibit No. 41.]

Q. (A paper handed to witness.) In whose handwriting is that letter ? A. Mr. Beecher's.

Q. Was it addressed to and received by you ? A. It was.

Mr. Fullerton (reading) :

BROOKLYN, Tuesday evening,  
2d January, 1872. }

MY DEAR MOULTON: 1. I send you V. W.'s letter to me, and a reply, which I submit to your judgment. Tell me what you think. Is it too long? Will she use it for publishing? I do not wish to have it so used. I do not mean to speak on the platform of either of the two suffrage societies. What influence I exert I prefer to do on my own hook, and I do not mean to train with either party, and it will not be fair to press me in where I do not wish to go. But I leave it for you. Judge for me. I have leaned on you hitherto, and never been sorry for it.

2. I was mistaken about the *Ch. Union* coming out so early that I could not get a notice of *G. Age* in it. It was just the other way, to be delayed, and I send you a rough proof of the first page and the *Star* article.

In the paper to-morrow a line or so will be inserted to soften a little the touch about *The Liberal Christian*.

3. Do you think I ought to keep a copy of any letters to V. W.? Do you think it would be better to write it again and not say so much? Will you keep the letter to me and send the other if you judge it wise? Will you send a line to my house in

the morning, saying what you conclude? I am full of company. Yours truly and affectionately,

H. W. A.

Q. Now, what letter was it that was inclosed to you when that was received ? A. A reply to Victoria Woodhull's letter asking that he preside.

Q. "I send you V. W.'s letter to me,\* What letter was that ? A. Victoria Woodhull's letter asking him to preside at a meeting, or to be present at a meeting.

Q. And he inclosed to you, as I understand it here, his reply to that letter ? A. Yes, Sir.

Q. What did you do with the letter and the reply ? A. I replied to the letter.

Q. How long was that prior to the meeting ? A. To the Saturday meeting ?

Q. Yes. A. I forget how long it was prior.

Q. Well, was it a long or short time ? A. Not a very long time.

Q. Some days or weeks ? A. A few days, I think, or weeks ; a few weeks. Will you let me look at the letter, Sir, please ? I received with this letter also the rough proof of the first page of *The Christian Union*.

Q. The proof of the article ? A. Yes, Sir.

Mr. Evarts—What is the number of this letter of January 2, 1872, just read ?

Mr. Pearsall—I have not had it marked.

[Letter marked Exhibit No. 42.]

Mr. Fullerton (paper handed to witness)—In whose handwriting is that letter ? A. Mr. Beecher's.

Q. Addressed to you ? A. It is, Sir.

[Letter submitted to Mr. Evarts.]

Mr. Fullerton (reading) :

SUNDAY MORNING February 16, 1873.

MY DEAR FRANK : I have tried three times to see you this week, but the fates were against me. I wanted to store up a little courage and hopefulness before my three weeks' absence. I revisit my old home and haunts, and shall meet great cordiality. I inclose check subject to your discretion. Should any accident befall me, remember how deeply I feel your fidelity and friendship, your long-continued kindness and your affection. With kindest remembrance to Mrs. M., I remain, yours always,

H. W. BEECHER.

Q. What check is therein referred to ? A. What is the date of it, Sir?

Q. February 16, 1873? A. I do not have any record of it here, Sir; there was a check inclosed in it; I thought I had it on this memorandum. I have not.

Q. Do you recollect what check it was? A. No, I don't; no just now.

Q. Well, do you know what the check was for? A. I suppose it was for Bessie Turner's school bill; I don't remember what it was for; I can find out.

Q. [Paper handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Mr. Fullerton (reading)—

MY DEAR FRANK: My papers are all here; and it would be far more convenient to have you here, if you are not too tired.

Yours, H. W. BEECHER.

[Marked "Exhibit No. 44."]



Q. [Paper handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Mr. Fullerton—[Reading:]

FRIDAY MORNING, July 10, 1874.

MY DEAR FRANK: Can you be seen this morning, and if so, when and where? Any time after 10 would suit me best; but *any other* hour I will make do. I came into town last night. Yours ever,  
H. W. B.  
[Marked—"Exhibit No. 45."]

Q. [Pass him No. 36.] In whose handwriting is that letter? A. Mr. Beecher's.

### MR. HALLIDAY INQUISITIVE.

Mr. Fullerton—[Reading:]

SUNDAY, a. m.

MY DEAR FRIEND: Halliday called last night. T's interview with him didn't satisfy, but disturbed. It was the same with Bell, who was present. It tended directly to unsettling. Your interview last night was *very beneficial* and gave confidence. This must be looked after. It is vain to build if the foundation sinks under every effort. I shall see you at 10:30 to-morrow, if you return by way of No. 49 Remsen-st.

Q. Now, who was Mr. Halliday, there spoken of? A. The assistant pastor of Plymouth Church.

Q. Do you know anything about this interview with Mr. Tilton, spoken of there? A. I knew that Mr. Tilton had had an interview with Mr. Halliday.

Q. And who is the Bell that is spoken of in this letter? A. He was either then or formerly superintendent of the Bethel School, a member of Plymouth Church.

Q. The letter states, "your interview last night was very beneficial and gave confidence." With whom did you have an interview? A. With Mr. Halliday.

Q. Mr. Halliday called upon you? A. Yes, Sir.

Q. What was the subject of the interview? A. The subject of the interview was—

Mr. Evarts—Did you report it to Mr. Beecher? A. Oh yes, Sir; I talked with Mr. Beecher about it afterward (laughing).

Mr. Fullerton—Answer my question now. What was the subject of the interview between you and Mr. Halliday? A. I had a conversation, Sir, previous to that—previous to my conversation with Halliday—with Mr. Beecher, in which he said that he would like to have me see Mr. Halliday, and that he would probably send Mr. Halliday to me with reference to some trouble in the church among the deacons—with reference to the stories that were going around about him and which were being considered there; and I told him that he had better send Halliday; and Halliday did come and I saw him.

Q. And that was the subject of your interview? A. A. Yes, Sir. Do you want to know what I said to Mr. Halliday and repeated to Mr. Beecher?

Q. Well, tell what that interview was. A. Tell it in the exact words, Sir?

Q. As near as you can recollect, give us the substance of it. A. Yes. I said to Mr. Halliday that I thought the

deacons were in pretty poor business, digging up differences that had been settled as between Mr. Beecher and Mr. Tilton; that I thought they ought to be in better business than digging out scandals. I told Mr. Halliday, in substance, and repeated it afterward to Mr. Beecher, that the stories had originated with Bowen, and that when he had been asked for the truth—when he had been asked for the evidence to support the stories he had—had n't been forthcoming with the truth; and, I believe, I told him that Mr. Beecher was guiltless; and, I told Mr. Beecher, before I saw Halliday, that I would satisfy Halliday if he would send him to me; and it was distinctly understood between Mr. Beecher and me—

By Mr. Evarts—Well, what passed?

Mr. Fullerton—Yes; what passed? A. What passed between Mr. Beecher—

Q. Yes, Sir; so that it was distinctly understood? A. I said I certainly should not tell the facts to Mr. Halliday, and the conversation that I had with Mr. Halliday I repeated to Mr. Beecher, and Mr. Beecher thanked me for it.

[Letter marked "Exhibit No. 46."]

Q. [Paper handed to witness.] In whose handwriting is that paper? A. Mr. Beecher's.

Q. [Handing paper to witness] In whose handwriting is that paper? A. Mr. Beecher's.

Mr. Fullerton—I will read it.

Sunday Night.

MY DEAR FRIEND: 1. *The Eagle* ought to have nothing to-night. It is *that* meddling which stirs up our folks. Neither *you* nor Theodore ought to be troubled by the side which you served so faithfully in public.

2. The deacons' meeting, I think, is adjourned. I saw Bell. It was a friendly movement.

3. The only near next danger is the women—Morrill, Bradshaw, and the poor, dear child.

If papers will hold off a month we can ride out the gale and make safe anchorage, and then when once we are in deep, tranquil waters, we will all join hands in a profound and genuine *Laus Deo*, for through such a wilderness only a Divine Providence could have led us undevoured by the open-mouthed beasts that lay in wait for our lives.

I go on the 12 train after a sleepless night. I am anxious about Theodore's interview with Halliday. Will you send me a line Monday night or Tuesday morning, care of H. P. Kennard, Boston, Mass.?

I shall get mails there till Friday.

[Copy letter marked "Exhibit No. 47."] [Handing letter to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Mr. Fullerton—I will read it.

July 13, 1874.

MY DEAR FRANK: I will be with you at 7, or a little before. I am ashamed to put a straw more upon you, and have but a single consolation—that the matter cannot distress you long, as it must soon end; that is, there will be no more anxiety about the future, whatever regrets there may be for the past. Truly yours and ever,

H. W. BEECHER.

[Copy letter marked "Exhibit No. 48."]

A MUTUAL APPROVAL OF MOULTON'S STATEMENT.

Q. Was there any new trouble threatened at any time? A. Any what?

Q. Any new trouble threatened at that time? A. What is the date?

Q. July 13, 1874. He says: "I am ashamed to put a straw more on you." Do you know what that straw was? A. We were consulting in regard to the reply he should make to the Bacon letter before the Investigating Committee.

Q. When was that Investigating Committee appointed, or, rather, when did you first hear of it? A. July 5 was the first day I heard of it, Sir.

Q. Did you hear of it from Mr. Beecher? A. Yes, Sir; he told me it was to be appointed, that there was an investigating Committee to be appointed, and he would have the naming of the members of it.

Q. Go on and state what was said on that subject.

Mr. Evarts—Give us the date again.

The Witness—July 5, 1874.

Mr. Fullerton—Give us the whole of that interview, as well as you can? A. On July 5, after he had told me at my house that he intended to follow the policy of silence, or that he did follow the policy of silence I indicated; I walked out with him and he told me that the matter had to come before an investigating Committee, and I asked him if he could tell me the names and he said he could, and he mentioned over some of the names. I told him I thought it was a mistake to have an investigating Committee, but that we would try to get along with even that, and I told him that I thought I should take, or probably I should have further counsel in the matter, and he said, "Who do you mean?" I said: "Gen. Butler; I have received a letter from him asking that there be silence." He said: "Yes, I have heard something about that. A friend of him, or a Mr. Bowen in Washington, saw Gen. Butler, and he advised silence, and this Mr. Bowen told his father, and his father told me." He said he did not believe much in the moral sense of Gen. Butler but he might be a good counsellor, because he considered him a wise man, and that at all events his advice was good for silence, and that is all that transpired at that interview.

Q. You omitted to state what he said upon the subject of naming the Committee? A. I did state that he said he would have the naming of the Committee; did I not so state.

Mr. Pryor—Yes, Sir.

Mr. Fullerton—Do you recollect anything farther at that interview? A. No, Sir; he didn't tell me at that interview. I was going to say he told me at that interview that he sent Gen. Tracy to see Gen. Butler, or

that he had been to see Gen. Butler, but it was not at that interview.

Q. Did he state anything at that time, or at any time previous, in regard to the origin of the Committee, how it came about that the Committee was appointed, who suggested it, and for what purpose? A. He said that some of his people in the church granted a committee. That is all that was said about it, I believe, and that he thought it could be got along with very well. He said that, I remember.

Q. How soon after the receipt of this letter, expressing regret that another straw was to be added to your load was it that you saw Mr. Beecher? A. On July 13.

Q. On the same day? A. Yes, Sir.

Q. What occurred at that interview? A. On July 13 I had replied to his letter that I was going down to his Committee on July 13 to make a statement in accordance with their invitation, and that I should be at home until a certain hour; my letter that I wrote to him will state what that hour was; I think it was 7 o'clock; and he came around, and I read to him a statement of what I intended to make to the Committee.

Q. Who were present when that was read to him? A. I read my statement to him alone in my study.

Q. Was that statement afterward read to the Committee? A. That statement was afterward read to the Committee; before I went down to the Committee I read the statement to Theodore Tilton, who was at the house also.

Q. What did Mr. Beecher say in regard to the statement when you read it to him? A. I am about to connect Theodore Tilton with Mr. Beecher in that matter: Mr. Beecher went into the room over the parlor, where my wife was, and I said to him, "Mr. Beecher, you consider this statement honorable for me to make?" and he said, "Yes, I do;" and I told him that I had read the statement to Theodore Tilton, and he also concurred in it, and the reason that Mr. Beecher and Mr. Tilton did not meet on that day was because Mr. Beecher said to me that he did not want to see Mr. Tilton.

Q. Now, if you will point out that statement? A. That his presence was always a rebuke to him, and unnerved him, and it was useless for him to attempt to reply to him when he spoke to him as against the facts—he could not do it—he didn't want to see him.

Q. (Handing book to witness.) See if that is the statement you refer to? A. This says August 5.

Q. That is not it, then? A. No, Sir.

Q. It was July 13? A. It was July the 13th. [Addressing Mr. Tilton.] Can you find it in there, Theodore—July 13?

Mr. Fullerton—If your Honor please, I cannot find in this unpagged book the statement which I desire to put in next, and the hour of adjournment having arrived, I propose to adjourn now.



Mr. Evarts—If your Honor please, we had a substituted paper yesterday which we might as well have now.

Judge Neilson—Has he the original of the paper?

Mr. Fullerton—I have it.

Mr. Evarts—It is the proposed card Mr. Tilton was going to publish, embodying what is now called the letter of contrition.

Judge Neilson—And also *The Union* newspaper?

Mr. Evarts—Yes, Sir.

Judge Neilson—They can bring it in on Monday morning.

Mr. Fullerton—I have found this statement, if your Honor please.

Judge Neilson—Well, we will perfect that the first thing on Monday morning.

Mr. Evarts—We will go on with that on Monday, if your Honor please. We have got through, and put up our papers.

Judge Neilson to the Jury—Gentlemen, you recollect the admonition made to you, and repeated with the concurrence of the counsel on both sides, requesting you not to read about the case, or converse with any person about it, or about the details of it; also my request that if any person should approach you to attempt to speak upon the subject in your hearing with a view to influence you it is your duty to name that person to me. We will now adjourn to Monday morning, inasmuch as the engagements of the learned counsel prevent their attending to-morrow, and it will need great circumspection and prudence upon your part to avoid being communicated with. That prudence will, perhaps, be stimulated by a becoming sense of the responsibility which rests on you. I trust you will not be wanting in attention to it. There seems to be an incongruity, however, in asking the jury not to read about the case, if the newspapers, which happily find their way everywhere, like leaves in Autumn, and go into every household, and are read by the members of the household, comment on the case and discuss it in editorials and expressed opinions, and in view of that I have thought proper to suggest to the gentlemen present connected with the press to convey my expression of hope to the editors that they will not, during the progress of the trial, discuss the merits of it or of any particular phase of it. There seems to be a propriety in it and a necessity for it. I want to say to the audience, which is so large to-day, that it has been very agreeable to me indeed to observe the order and the patience with which the proceedings have been allowed to proceed. The jury will now pass out with the officer. Return, gentlemen, and be in your places on Monday morning at 11 o'clock.

The Court then broke up for the day.

## SIXTH DAY'S PROCEEDINGS.

### OPENING OF THE CROSS-EXAMINATION.

CLOSING PARTS OF THE DIRECT EXAMINATION—THE PROPOSED STATEMENTS WHICH WERE FINALLY WITHHELD—WHAT WAS SHOWN TO DR. STORRS—EX-JUDGE PORTER'S FIRST QUESTIONS.

The direct examination of Francis D. Moulton in the Tilton-Beecher suit was closed on Monday, Jan. 18, and the cross-examination was begun by ex-Judge Porter. The concluding portions of his direct testimony related mainly to the proposed statements which were prepared prior to Mr. Tilton's appearance before the Committee. Mr. Tilton's counsel contended that Mr. Beecher's disposition to smother an investigation and to compromise the case by the substitution of an equivocal for a full statement of facts was a proof of his guilt. The statement which Mr. Tilton made for presentation to the Rev. Dr. Storrs was read, the defense suddenly withdrawing an objection by which they might have excluded it.

### MR. MOULTON UNDER FIRE.

If Mr. Moulton had been dreading the ordeal of cross-examination through which he was to pass, the simplicity of the first questions must have reassured him, for they related to his age and business. Ex-Judge Porter has an erect, soldier-like figure, black hair and mustache, ruddy cheeks and pleasant though positive features. His spectacles are rarely off his face, although he has a habit of pushing them from their normal position to the higher plane of the forehead. When he rises he folds his arms across his breast, and with a sidelong glance at the witness puts the question in a tone which is as soft as it is deep. His manner soon puts a witness off his guard. His courtesy is never lost for an instant. Even when his voice swells with emotion or with repressed indignation there is a return to the measured tones of civility before the interrogation point is reached. The contrast between him and Mr. Evarts in cross-examination is very marked. Mr. Evarts had an opportunity last week for disconcerting Mr. Moulton and his method was very different from his colleague's. The questions dropped from his lips thick and fast, and the intensity of his manner, the earnestness of his mien, and the undertone of scorn in his voice combined to heat and agitate the witness. Ex-Judge Porter carries the manners of the drawing-room into court. He neither browbeats nor worries his witness. His manner, though earnest and impressive, does not strike

terror into the soul. But the witness who fancies that he is to escape from the rack because the inquisitor's voice is soft and caressing, and his manner smooth and cordial, soon finds that there is a grip of iron under the velvet paw.

Mr. Moulton, through protracted experience in the witness chair, has lost much of the nervousness which characterized his first appearance before the audience; but some of it returned when the fine irony of ex-Judge Porter's first reference to the functions of a "mutual friend" drew a smile to the faces of the auditors. Ex-Judge Porter's method of cross-examination may be termed cumulative in its effect. He leads up to a vital point through a long series of minor questions. His first point was reached after a hundred questions had been asked. The vital question was substantially this: "The inception of your friendship for the Rev. Henry Ward Beecher was on that stormy night when you heard that he debauched your friend's wife, and its termination was at the time when you refused him access to the letters by which he wished to defend himself against a foul charge?" This was the last round in a long ladder, and when it was reached every one in court saw how effective was the climax.

Mr. Moulton insisted at the outset that he had never denied to Mr. Beecher or to his agent, Gen. Tracy, access to the scandal literature during the early stages of the Plymouth Church Investigation. "Be kind enough to refresh your recollection," said the counsel in his blandest manner, handing to the witness a book containing the statements of the various actors in the controversy. Mr. Moulton then described an interview which he had last Summer with Gen. Tracy, his voice rising as it always does when he refers to Mr. Beecher's counsel. Ex-Judge Porter referred to the second demand for the papers intrusted to Mr. Moulton, and the reply to Mr. Beecher's letter was read with splendid emphasis, sidelong glances at the witness accompanying the fine irony of the counsel's manner. Mr. Moulton evidently was nettled by the manner in which the business-like communication which he dashed off last Summer on his return from Narragansett Pier was interpreted, and his irritability soon manifested itself. The question was asked: "Were you the mutual friend of both these men at that time?" "As friendly to one as to the other," he rejoined. "Had he ever wronged you?" "Except when he asked me to lie for him." "You did lie for him?"

"Yes." "We have your word for it," said ex-Judge Porter, with freezing sarcasm.

Mr. Moulton's next reply was that he had furnished no copies of any of the documentary evidence to Mr. Tilton prior to the hour when Mr. Beecher demanded the letters. The retraction which Mr. Beecher surrendered to him was not dictated to Mr. Tilton, and he did not know that Mr. Tilton had copies. "Did you ever dictate to Mr. Tilton?" asked the counsel in his smooth manner. "I swear that I did not," was the quick reply. Mr. Tilton and his counsel glanced at each other uneasily at this point, for Mr. Moulton was on dangerous ground, inasmuch as Mr. Tilton, in his examination before the Investigating Committee, had admitted that he had taken shorthand notes of all the letters which appeared in his first statement, and which, he said, Mr. Moulton read to him. Then again, Mr. Moulton himself on Thursday last, had, in answer to Mr. Evarts's questions, acknowledged that he had dictated from memory to Mr. Tilton the letter of resignation which Mr. Beecher had shown to him. Mr. Beach soon sprang to his feet to object to the reception of Mr. Beecher's challenge to Mr. Moulton to produce the letters which had been intrusted to him in confidence. The debate which followed between him and Mr. Evarts was a keen, polished argument on each side, Mr. Evarts claiming that this letter marked the date of Mr. Moulton's hostility to Mr. Beecher. Mr. Evarts was finally compelled to content himself with an exception. This debate gave Mr. Moulton breathing space, and he answered the next questions relating to his slight acquaintance with Mr. Beecher before Dec. 30, 1870, with much composure and even with a smile. The rounds of the ladder were now all in place save the last. This was the question quoted earlier in this recital, and when it was asked his auditors perceived the outlines of a perfect climax, and significant glances were exchanged in many parts of the court-room. Mr. Moulton's tone changed in an instant, and during the remainder of the session his manner was quiet and subdued.

There were only a few minutes in reserve, and ex-Judge Porter contented himself with the point which he had made, although he filled up the hour with unimportant questions in relation to Mr. Moulton's intimate friendship for Mr. Tilton.

#### THE LEGAL BY-PLAY.

Ex-Judge Fullerton opened the day's proceedings with a brilliant stroke. Mr. Moulton testified that the short statement which he made before the In-



investigating Committee was regarded by Mr. Beecher as perfectly honorable. Mr. Evarts objected to the reception of the statement, and after a sharp passage of argument, in which Mr. Beach, ex-Judge Fullerton, and Mr. Evarts took part, the Judge ruled it out. Mr. Evarts was perfectly willing to admit so harmless a document if its pertinence could be shown, and ex-Judge Fullerton claimed that Mr. Beecher had expressed approval of Mr. Moulton's action, and by discountenancing the investigation which he was calling for in public had admitted in private his own guilt. When the Judge's decision was rendered, Mr. Beach in a whisper to his associate advised the introduction of certain parts of the statement. Mr. Evarts protested vigorously against the reading of parts of the statement without discrimination, and when the tactics of his opponents proved successful he made no effort to conceal his disgust.

A quick retort which Mr. Evarts made to ex-Judge Fullerton was an incident of the session. Mr. Moulton had been saying that Mr. Beecher, immediately after the appointment of the Committee, had agreed to postpone its sessions in the hope that his friend would induce Mr. Tilton to keep back the truth. Mr. Moulton had said to him, "You can do nothing more unless you confess the crime." Mr. Beecher said, "It will ruin me and kill Mr. Tilton." Mr. Evarts here raised a technical objection in his methodical way, and ex-Judge Fullerton, with a sigh which seemed to indicate that his opponent was altogether too "fussy" about some things, exclaimed, "Oh! well, we'll gratify you!" "No;" said Mr. Evarts, with dignity, "you will satisfy the law."

The proposed statement which Mr. Beecher wrote Mr. Tilton would not make because, as he told Mr. Moulton, he did not care to appear the victim of a hallucination. Mr. Beecher said that it would kill him to tell the whole truth to Mr. Sage or to any member of the Committee. After Mrs. Tilton appeared before the Committee, Gen. Tracy described her manner with so much pathos that Mr. Tilton's rage cooled, and he consented to write a new statement, which he showed to Gen. Tracy.

Mr. Moulton's recital of the circumstances under which Mr. Beecher paid him \$5,000 for *The Golden Age* without the knowledge of Mr. Tilton was given very cautiously and quietly until he came to the interview with Gen. Tracy, in which he was advised to tell Mr. Tilton that the paper had been kept alive by Mr. Moulton. Gen. Tracy had attempted to in-

timidate the witness, and Mr. Moulton's tone again became declamatory in resenting such a liberty.

The admission of the statement that was shown to Dr. Storrs by Mr. Carpenter and Mr. Tilton surprised every one. The defense had a ruling in their favor and could have kept out Mrs. Tilton's short statement, but for reasons the force of which will appear when their own evidence is offered, suddenly withdrew their objections.

Mr. Moulton in correcting his own testimony gave Mr. Evarts a rare opportunity for annoying his opponents and confusing the witness just as the cross-examination was opening. Mr. Evarts had altogether the best of this passage at arms, and ex-Judge Fullerton had recourse to repartee to conceal his discomfiture. Mr. Evarts had used the expression, "exploded conversation," and his opponent rejoined, "Mr. Moulton did n't explode so frequently as you do!"

Mr. and Mrs. Beecher were absent morning and afternoon. Mrs. Tilton and her Quaker friend, Mrs. Field, were present. The audience was smaller than on previous days. There were few members of Plymouth Church in attendance, and there were no bouquets in the room.

#### THE PROCEEDINGS.

All the principals in the great scandal suit were in their places on the opening of the court on Monday, which was the eleventh day of the trial. Ex-Judge Morris has so far recovered his health as to be able to resume his duties in the case. The direct examination of Mr. Moulton was resumed, the first part being in reference to his appearance before the investigating Committee.

#### BEECHER INSINCERE IN APPROVING INVESTIGATION.

Francis D. Moulton was recalled, and the direct examination resumed.

Mr. Fullerton—Look at the paper now shown you, and see whether that is your first statement to the Committee of Investigation [handing witness a paper]? A. It is, Sir.

Q. When was it prepared? A. Prepared for reading to the Investigating Committee of Plymouth Church, July the 13th.

Mr. Evarts—If your Honor please, how is this material? This is no part of any *res geste* that I know of. The paper was introduced to the attention of the witness as we were about adjourning. Now his attention is called to it. It is what is called the first statement?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—It is called the first statement, not the long one.

Mr. Fullerton—The first statement.

Mr. Evarts—The first statement which Mr. Moulton prepared, as he has just now stated, in reference to some pending inves-

nigation that was in progress. Of course that is not evidence on its face. It has nothing to do with this issue.

Judge Neilson—The only possible suggestion that occurs to me in favor of its being evidence is that Mr. Beecher approved its use of it.

Mr. Evarts—That will appear afterwards, I suppose. If it is intended to show that it is Mr. Beecher's statement, then we can understand that it is evidence against Mr. Beecher.

Mr. Fullerton—The gentleman's objection is premature. I have not offered the statement yet in evidence, nor have I given all the preliminary proof which I design to give before I offer it in evidence. If that preliminary proof is insufficient when the offer is made, then of course the gentleman can properly object.

Judge Neilson—It appeared that you were about to offer it; I thought you were and so did the counsel, I suppose.

Mr. Fullerton—I am about to offer it, Sir, but I have not yet offered it.

Judge Neilson—If I see an opportunity to narrow the circle of proof I should be very glad to do it, if I can do it properly.

Mr. Fullerton—Yes, Sir; but I don't want to close the circle until the proof is in, so as to shut it out.

Q. What did you do with the statement before you went before the Committee with it? A. Read it to Mr. Beecher.

Q. Where? A. At my house in Remsen-st.

Q. Any one else present besides yourself and Mr. Beecher? A. Not when I read it to him; no, Sir.

Q. When was it read to him? A. Read to him on the afternoon of the 13th, toward evening.

Q. State the conversation between you and Mr. Beecher at the time of reading it? A. I said to him, "Mr. Beecher, I have an invitation to appear before your Committee to-night, and I will read to you the statement which I intend to make there, and if it meets with your approval I should like to have you say so." I read it to him, and he said he thought it an honorable statement, and it met with his approval; he concurred in it—in the propriety of it, so far as I was concerned. After reading it to him I went down stairs with him, into the room where my wife was, and my wife said to Mr. Beecher, "What do you think of Frank's statement?" And I said, "Mr. Beecher has said it is an honorable one;" and my wife said, "You consider it honorable?" And he said, "Yes." I said then to him that I had also read it to Mr. Tilton, and he also concurred in it.

Mr. Fullerton—I now offer it in evidence.

Mr. Evarts—How is it evidence on any issue here? Here is a statement in the nature of an argument or proposition of Mr. Moulton's relation or attitude towards an investigation going on; and Mr. Beecher who is a party interested in that inquiry—and Mr. Tilton, if you please, also interested in that inquiry as the accuser—say in respect to a statement that Mr. Moulton proposes to make that it is an honorable statement for him to make. I don't know whether the statement contains any facts or not. It is a short statement, and rather in the nature of a reason for not going on any further, isn't it?

Mr. Fullerton—That is one view to be taken of it.

Mr. Evarts—It is not any evidence on any issue in this cause,

and if it is admitted it must be admitted against our objection and exception.

Mr. Fullerton—I am somewhat surprised that the learned counsel should object to the reading of the statement and at the same breath confess that he does not know what is stated in it, because what is stated in it makes it proper to be read in evidence. If the learned counsel had perused it, he would see at once that it becomes an important piece of evidence in this controversy, and I can state very briefly how it becomes important. In the first place, it does state facts which have a bearing upon this issue. In the next place, it discloses a disposition upon the part of Mr. Beecher to throw obstacles in the way of this investigation which he himself had set on foot; and we suppose that it is a material fact in this case to show that while he was pretending that he wanted an investigation, in point of fact he wanted no such thing, and tried to smother it. Those two facts become very apparent by the reading of this paper.

Judge Neilson—Very well; the last fact, if it be such—the suggestion that Mr. Beecher wished to smother the investigation—is not at all material here, and I think on the whole it is my duty to rule out that paper.

Mr. Fullerton—Will your Honor hear us upon that subject?

Mr. Evarts—You have just been heard.

Mr. Fullerton—I propose to be heard again. That is for the Court and not the counsel to determine.

Judge Neilson—I cannot conceive how anything that the witness could have written, any statement of facts—we have the facts otherwise—any argument, how that could be material in any point of view in this case.

Mr. Fullerton—Why, Sir, one strong argument to be made upon the other side in this case is this, that Mr. Beecher courted this investigation; he appointed a committee for the purpose of going to the bottom of this scandal, and developing every fact that could possibly throw any light upon the subject, and hence they say he was innocent of this charge; that the scandal had no foundation in fact. Doesn't it become important for us to show while, upon the one hand he was pretending that he wanted an examination, that he was secretly trying to suppress it? Why, certainly, Sir, it turns away the edge of that instrument which they use against us in this case. It becomes very important that we should show that fact. Then, upon the other hand, I think, even if your Honor should conclude to shut it out for that reason, it must be admitted for another reason, and that is that he stated facts, and that Mr. Beecher acquiesced in those facts—said that it was a proper statement to be made; that it was an honorable statement upon the part of Mr. Moulton, and truthful.

Mr. Evarts—He has not said that.

Mr. Beach—Yes, Sir; he has said it was a true statement. Let us see from the stenographer's notes whether he said it.

Mr. Fullerton—I want to show that up to that hour Mr. Moulton was in the confidence of Mr. Beecher, and acted as he wanted him to act.

Judge Neilson—That appears. The real question is whether it does state facts, and whether Mr. Beecher assented to the



correctness of the statement of facts. Has counsel looked at the paper?

Mr. Evarts—I have looked at it heretofore generally. I haven't it before me at this moment.

Mr. Fullerton—Why, Sir, the paper acknowledges the offense.

Mr. Evarts—Your Honor can look at the paper if it is desired.

Mr. Beach—There is, first, Sir, a dispute to be settled in regard to what is the evidence of the witness in regard to the recognition by Mr. Beecher of the accuracy of this statement, and [to THE TRIBUNE reporter] I therefore ask the stenographer to read the evidence of Mr. Moulton as to what Mr. Beecher said upon that subject.

[THE TRIBUNE stenographer read the testimony referred to.]

Mr. Beach—The evidence then is that when the statement was read to Mr. Beecher he concurred in it. If, therefore, the statement contains any fact material to this issue it certainly is competent to be given; and, although it is true, as your Honor says, that Mr. Moulton can make no statement that shall be conclusive upon Mr. Beecher, your Honor will recognize the truth of the proposition that when a statement of a fact is made to a party and he concurs in that statement of fact, it is an adoption of the statement and it becomes evidence against him. And, if your Honor please, that question was before you upon an earlier interlocutory question, and the case in the 55th New York was referred to, and was at that time acquiesced in by your Honor's decision, and it is a too familiar principle to be disputed. But, if your Honor please, will you regard the suggestion which is made by my associate upon the other aspect in which this evidence is important. Is it not a material fact for us to show that whenever this subject was presented or discussed, whenever upon any occasion it was advanced for investigation, whatever was the public attitude of Mr. Beecher with reference to that inquiry, yet he in secret repressed and discountenanced all investigation into the subject? Is it not a substantial fact to be given in evidence against any person, accused either of crime or of offense, that he labors at concealment, avoids investigation, endeavors to escape from all agitation of the subject? Is not concealment everywhere an evidence of guilt, and may we not in that aspect alone present this evidence, with other evidence which your Honor has received tending to the same issue and leading to the same result?

#### MOULTON'S FIRST STATEMENT EXCLUDED.

Judge Neilson—The various papers that have been put in have been read without objection. I do not recall a single one—not even Mrs. Morse's letter—that was objected to. The effect of the paper was spoken to by counsel, and that held in reserve by him, but the reading of the paper was not objected to. This is the first one, I think, that has been thus objected to. The simple question is, Mr. Evarts, whether it is admissible as having been approved by Mr. Beecher.

Mr. Evarts—Exactly.

Judge Neilson—There is this to be said about it at the same time. An approval by the defendant—an unqualified approval would be one thing. An approval of it as proper to be put in

Mr. Evarts—Whenever this paper shall be read, if your Honor shall think that it is admissible, its entire harmlessness as affecting the case of this defendant will be apparent; but, nevertheless, the question arises for counsel whether matters not pertinent to an issue which includes the range and scope of what is pertinent, and enough, and an adequate variety of evidence—whether evidence not pertinent should be admitted because it is not injurious is not a question with which counsel have properly nothing to do. Here is a statement of Mr. Moulton, who occupied the position of a witness notified to attend before a church examination which had no compulsory power over him. He did not go there as a witness, but he prepared a statement which was to be for the present at least an answer for his not testifying, and he read it to Mr. Beecher and asked him if he thought it was an honorable statement for him (Mr. Moulton) to make in that behalf, and for that purpose; and then he asked Mr. Tilton the same thing, and then Mrs. Moulton, it seems, had an interest in asking the question, and the result of it is, no doubt, as it stands—that Mr. Beecher had this little short statement of half a page, which I hold in my hand, read to him, and said that it was an honorable statement for him to make, and, if you please, concurred in the propriety of his making it; that is all.

Judge Neilson—That had reference, of course, to the attitude of Mr. Moulton.

Mr. Evarts—No doubt—the propriety of his making it.

Mr. Fullerton—He states some facts which bear upon this issue.

Mr. Evarts—Who?

Mr. Fullerton—Mr. Moulton; in that statement.

Mr. Evarts—Whatever is in that conversation that bears on the issue is not what we are now discussing. The question is whether this statement bears on the issue?

Mr. Fullerton—My reply is—

Mr. Evarts—I believe I have the floor. My learned friend undertakes to say, and he is supported by his learned associate, that whatever indicates an aversion on Mr. Beecher's part to a promulgation of scandal, and an examination into scandal, is to be produced as evidence that he is guilty of a crime. There is no principle of human nature, and no rule of law, that imputes any such consequences to any such efforts. There is one simple issue to be tried in this cause, the burden of which has been assumed by this plaintiff, and that is to prove the adultery of his wife; and I would like to know how these conversations as to the latitude and mode of meeting an inquiry into that matter, and the aversion of one party to the alleged fault—the alleged guilt, being in imposed to have the inquiry made, bears upon the question, which is the real question that your Honor or the jury are occupied with—the existence of the fact.

Mr. Fullerton—I agree entirely with the learned counsel as to the issue between these parties, and as to who has taken the affirmative of that issue, and I assert again that there are facts stated in this statement which bear upon that issue. It was a statement read to Mr. Beecher, Mr. Beecher understanding perfectly well that that was to be promulgated before the Committee. Doesn't it become important, therefore, to look

into this statement and see what was there said with reference to this crime charged upon Mr. Beecher? Suppose that Mr. Moulton in that proposed statement had acknowledged Mr. Beecher's guilt, but did not think that it was a subject for investigation, that it ought to be suppressed; would not that become evidence? Why, it seems to me, if the Court please, that the proposition is too plain for argument, and if your Honor will take the statement and examine it, you will see that Mr. Moulton came directly to the point in that statement and gave his reasons why he should not testify, and those reasons bear upon this question now before the jury. There can be nothing plainer, Sir. I beg your Honor to look at this statement.

Mr. Everts—Your Honor can look at the paper.

Mr. Beach—I have sent for an authority, Sir, that I wish your Honor to see.

Judge Neilson—I do not think it will help me any to look at the paper [taking the paper].

Mr. Everts—It is a very short paper.

Mr. Fullerton—And a very significant one. Then in another point of view, already presented to your Honor, this paper becomes exceedingly important. I repeat what I said before, that when Mr. Beecher makes efforts to suppress investigation, he certainly is doing something from which his guilt may be inferred. I cannot see any other inference to be drawn from it. He says to the public: "I want investigation." He says to his church: "Appoint a Committee for the purpose of investigating," but in private and in secret he is attempting in every possible way to prevent it. As a matter of course, the testimony of Mr. Moulton before that Investigating Committee was of the first importance. He had been connected with this unhappy matter from the beginning up to the time of the meeting of the Investigating Committee. He had within his knowledge facts which would enable him to determine whether the slander was groundless or well-founded. Now, if Mr. Beecher prevented or attempted to prevent him from going before that Committee, organized by himself, so as to shut out all these facts within that gentleman's knowledge, doesn't it become important? Doesn't it bear upon this question, and in connection with the flood of evidence in this case is not the jury warranted in drawing an inference from it? Does it not add to the force and to the effect of the other testimony in this cause? It cannot be said to be irrelevant. It is always competent to prove against an individual on trial for an offense that he endeavored to suppress testimony, that he got a witness to go out of the jurisdiction of a court and beyond its process, that he undertook for a compensation to withhold the truth; anything of that kind is competent in the trial of an individual for an offense. The suppression of the truth is always evidence of guilt on the part of an individual who is on trial.

Mr. Beach—I read to your Honor from the case of *Kelley v. The People*, in the 55th of New York, page 565. I read from page 577. It was a criminal case:

"When an individual is charged with an offense, or declarations are made in his presence and hearing touching the fact of the guilt or innocence of an alleged crime, and he remains silent when it would be proper for him to speak, it is the province of the jury to interpret such a silence and determine whether his silence was, under the circumstances, excused or explained.

At most, silence, under such circumstances, is but an implied acquiescence in the truth of the statements made by others, and thus presumptive evidence of guilt, and, in some cases, it may be slight, except as confirmed and corroborated by other circumstances."

In this case, your Honor perceives, it was not simple silence; it was an explicit concurrence.

"But it is some evidence, and therefore I except in those cases where the statements are made upon an occasion and under circumstances in which the individual sought to be affected could not with propriety speak, as in the progress of a judicial investigation, or in a discussion between third persons not addressed to or intended to affect the accused or induce any action in respect to him, so that for him to speak would be a manifest intrusion into a discourse to which he was not a party, the evidence is competent and should be admitted."

Your Honor will also observe that this was not a conversation between third parties. It was an appeal addressed directly to this defendant himself. It was in relation to an investigation of an offense charged against him, in which the truth of that accusation was to be investigated by a Committee selected by himself. Therefore it was proper for him to speak; the occasion demanded utterance upon his part. He knew that this statement was to be presented to that Committee, and he knew in what degree and to what extent that statement would affect that investigation. The Court proceed to say:

"Any declaration of the individual in response to a statement so made would be admissible in evidence, and an omission to make an answer to it, or notice it like other acts of the party, is to be interpreted, and such effect given to it, as evidence, in connection with the other circumstances of the case, as the Jury in their discretion shall think it entitled to. The implication of assent to a statement affecting the guilt or innocence of an individual from an omission to controvert, qualify or explain it, arises from the fact that a person knowing the truth or falsity of a statement affecting his rights made by another in his presence, will, naturally under circumstances calling for a reply, deny it if he be at liberty to do so. If he do not intend to admit it. It is no objection to the admission of the declarations of the accused as evidence, that they are made while he is under arrest; and his admission, either expressed or implied, of the truth of a statement made by others under the same circumstances, is equally admissible. His conduct and acts, as well in custody as when at large, may be given in evidence against him; and their cogency as evidence will be determined by the Jury."

Now, Sir, I do not think that argument can illustrate the application of that principle to this case.

Judge Neilson—I still think that in this instance it was understood that the witness was to make a statement to the Committee. It appears his statement had been prepared, had been submitted to Mr. Tilton. It was, in a friendly spirit no doubt, submitted to Mr. Beecher, and he had in view the fact that Mr. Moulton was making a statement—and, of course, a statement from his standpoint of view. I think the case is very much as an instance would be where a witness testifies, testifies adversely to you; and yet you admit that, differing from your view, it was honorable in him to testify as he did. The paper did not call, it seems to me, for a contradiction on the part of this defendant; and I still think I must rule it out, Sir. Take an exception.

Mr. Beach—We except. [To Mr. Fullerton.] We want it to



appear upon the record; that is all. That does not put it upon the record.

Mr. Fullerton—I want to offer parts of this, Sir, if the whole is not admitted.

Judge Neilson—Well, you can frame the offer in such form hereafter as need be.

Mr. Beach—No, Sir; we want it on the record.

Judge Neilson—Frame it in your own way.

Mr. Fullerton—Then I offer this part in evidence.

Mr. Evarts—If they are to offer any parts in evidence, they should be marked and handed to the Court for the Court to pass upon. Your Honor has held that the paper itself shall not be offered to the Jury. I ask that they be handed up to your Honor.

Judge Neilson—He has a right to say he offers to prove one clause after another.

Mr. Evarts—Yes, but the point is this, if your Honor please: he proposes to your Honor that certain parts of a written paper, notwithstanding the paper itself is not admissible (which your Honor has ruled), are admissible. Now, how he expects to make that lodgement and distinction, I don't know.

Judge Neilson—Well, the counsel can mark the parts.

Mr. Evarts—Yes, Sir, and hand it to your Honor.

Mr. Beach—That does not bring it upon the record. I do not see much difficulty in supposing that a whole instrument may not be admissible; as a whole, there may be some immaterial matter in it which would be sufficient to exclude it when offered as a whole, and yet there may be parts of it, statements of fact which we say were admitted by Mr. Beecher on that occasion, which may be admissible.

Judge Neilson—Your rights ought to be saved in respect to it, of course; any form that will do that.

Mr. Fullerton—Then I offer in evidence—

Mr. Evarts—We object.

#### A LAWYER'S SHREWD FLANK MOVEMENT.

Judge Neilson [to Mr. Fullerton]—The counsel objects to your reading it in the hearing of the Jury.

Mr. Fullerton—Well, your Honor, I can't get it on the record without reading it. Your Honor don't put it on the record by reading it.

Mr. Evarts—Why, certainly; he marks it.

Mr. Fullerton—Not at all. If it is shut out it will do no harm to the defendant. If it is let in, why then it has its natural effect.

Mr. Evarts—Of course it is always more interesting to counsel to have the evidence both in, and have an exception for ruling it out; that we understand. Now, he has got an exception to its being ruled out, and now he would like to have it in.

Mr. Beach—How does it get in when it is not admitted?

Mr. Evarts—By reading it.

Mr. Beach—Does reading a proposition make it evidence?

Mr. Evarts—It answers the purpose.

Mr. Beach—Answers the purpose? How? Does the gentleman distrust the gentlemen of the Jury that they will not obey your Honor in ruling out evidence? And does your Honor mean to deny us the privilege of making a proposal of proof?

Judge Neilson—No, Sir.

Mr. Evarts—In the ordinary mode.

Mr. Fullerton—I offer in evidence this part of the statement to wit [reading]:

"I regret for your sakes the responsibility imposed on me of appearing there to-night. If I say anything, I must speak the truth. I do not believe that the simple curiosity of the world at large or, even of this Committee, ought to be gratified through any recitation by me of the facts which are in my possession, necessarily in confidence, through my relation to the parties. The personal differences of which I am aware, as the chosen arbitrator, have once been settled honorably between the parties, and would never have been revived except on account of recent attacks, both in and out of Plymouth Church, made upon the character of Theodore Tilton, to which he thought a reply necessary. If the present issue is to be settled, it must be, in my opinion, by the parties themselves, either together or separately, before your Committee, each taking the responsibility of his own utterance. As I am fully conversant with the facts and evidences, I shall, as between these parties, if necessary, deem it my duty to state the truth, in order to final settlement, and that the world may be well informed before pronouncing its judgment with reference to either. I therefore suggest to you that the parties first be heard, that if then you deem it necessary that I should appear before you, I will do so, to speak the truth, the whole truth and nothing but the truth."

Judge Neilson—Well, that is ruled out. You take an exception specially to that. Now the next.

Mr. Fullerton—I also offer this, to wit:

"I hold to-night, as I have held hitherto, the opinion that Mr. Beecher should frankly state that he had committed an offense against Mr. Tilton, for which it was necessary to apologize, and for which he did apologize in the language of the letter, part of which has been quoted."

Judge Neilson—Same ruling as to that, and same exception.

Mr. Fullerton—I also offer this:

"That he [referring to Mr. Beecher] should have stated frankly that he deemed it necessary for Mr. Tilton to have made the defense against Dr. Leonard Bacon, which he did make, and that he (Mr. Beecher) should refuse to be a party to the reopening of this painful subject."

Judge Neilson—Same ruling.

Mr. Fullerton—[Reading]:

"If he had made this statement he would have stated no more than the truth, and it would have saved him and you the responsibility of a further inquiry. It is better now that the Committee should not report; and, in place of a report, Mr. Beecher himself should make the statement which I have suggested, or that if the Committee does report, the report should be a recommendation to Mr. Beecher to make such a statement."

Judge Neilson—Same ruling as to that.

Mr. Evarts [excitedly]—Now, if your Honor please, my learned friend has read every particle of this paper except mere surplusage. [Violently throwing a book on the table.]

Judge Neilson—He gets it on the record in that way; I think it is proper.

Mr. Evarts—He has done it, as I told you.

Mr. Fullerton—And I have read it because I want to offer it in evidence, except the surplusage.

Judge Neilson—I think you have done properly.

Mr. Fullerton—Is the complaint that I have not offered the surplusage?

Mr. Evarts—The situation is a very plain one. You offered a paper which was ruled out. There should have been an end of it. You then offered parts of it, as you said, on some particular discrimination, and in that respect. You read the whole paper except a mere formality.

Mr. Fullerton—And the whole paper is ruled out and all its parts?

Mr. Evarts—That was the first ruling.

Mr. Fullerton—Undoubtedly it was.

Mr. Evarts.—You said you would make the discrimination.

Mr. Fullerton.—I have discriminated.

Mr. Evarts.—Well, I don't see it. [Laughter.]

Mr. Fullerton.—The gentleman says I have not offered the surplusage. I have discriminated between the wheat and the chaff. He wants the chaff also, if I understand him right. [Laughter.] I left out just what I chose to leave out. The gentleman cannot preclude me from making my offer of testimony.

Judge Neilson—That is right. The audience don't begin well this Monday morning. This is a bad beginning. Please not to repeat that again.

By Mr. Fullerton—Now, had the Bacon letter then been published? A. Yes, Sir; the Bacon letter was published, had been published—the Bacon letter had been published.

Q. Do you know how long it had been published?

Mr. Beach—We take exception to each of those rulings.

Judge Neilson—Yes, Sir.

The Witness—June previous.

Q. State whether that Bacon letter had been the subject of conversation between yourself and Mr. Beecher? A. It had been; yes, Sir.

Q. Prior to the reading of the statement of which you have spoken? A. Yes, Sir; and was the subject of conversation at the time I spoke to him with reference to this statement.

Q. And what did Mr. Beecher say at the time you read that statement to him, if anything, with reference to the apology, so called; I refer to the letter of January 1st, 1871, in that conversation? A. I said to him, I said to Mr. Beecher—

Q. Go on? A. I said to Mr. Beecher, "I have recommended from the first—have said from the first, rather, that this Bacon letter, in my opinion, offered a basis for reconciliation on account of the introduction of the word 'offence,' and the reason that I have followed the line of them in this statement is, that I want to carry that view into the Committee, and don't want to go any further than that;" and then he said, "I concur in the propriety of that statement." After hearing my reasons he said, "I concur in the propriety of that statement," and I said to Mr. Beecher, "You consider it honorable, do you not?" and he said, "Yes, I do." That was the conversation between Mr. Beecher and myself. There was a further conversation with regard to the publication of the correspondence between Mr. Beecher and the Committee subsequently to that time.

Q. That I am coming to in a moment; when did you first learn that the Committee had been appointed? A. From Mr. Beecher, on July the 5th.

# MOULTON'S LAST OFFICES AS MUTUAL FRIEND.

Q. Was there any talk between you and Mr. Beecher in regard to the composition of that Committee before it was ordered or appointed? A. He said he should have the naming of the—

Q. How? A. He said he should have the naming of the people upon it.

Q. When was that conversation? A. On July 5th.

Q. What occurred, now, immediately subsequent to July 5th in reference to the proceedings before that Committee between yourself and Mr. Beecher? A. What occurred when—on July 5th?

Q. Yes, after you learned the Committee was appointed what occurred between you and Mr. Beecher with reference to any proceedings before it?

Mr. Evarts—That has already been gone into.

Mr. Fullerton—No, Sir, it has not.

Mr. Evarts—What he has lately stated was mere repetition of what he said before.

Mr. Fullerton—I will show the gentleman that there is something that has not been developed.

Judge Neilson—Go on.

The Witness—He consulted—I saw Mr. Beecher at his house, Sir, with regard to the report which he was to make to the Committee.

Q. Now, state when that was? A. It was during the week of the 12th of July, commencing the 12th of July, between the 12th and the 20th. I saw him several times, Sir, at his house.

Q. At his house? A. Yes, Sir.

Q. With regard to what? A. With regard to the report which he should make to the Investigating Committee of his church.

Q. State whether he had it prepared? He read to me, Sir, from a paper what he proposed to say with regard to Theodore Tilton.

Q. And what was it? A. The substance of it was that he took upon himself great blame for his conduct toward Theodore Tilton and his family, and exonerated Theodore Tilton from all blame so far as concerned Tilton's action towards himself; and I said to him: "Mr. Beecher, I think that I may be able to induce Theodore Tilton not to write the statement which he is writing, if I express to him fully the ground that you take with regard to him; because I cannot see that you can do anything more, unless you confess absolutely to the Committee the crime which you have committed against him and his family. And I will try to influence Mr. Tilton upon the basis of what you have told me." And he said: "I hope you will succeed in doing that; if Theodore publishes the fact, as he has threatened to, of my relations with Mrs. Tilton, it will ruin me, but it will kill him;" and he wept in expression—in expressing to me at that time his sorrow for the crime that he had committed; and I, Sir, was deeply affected myself with his presentation of his contrition; and I went to Theodore Tilton and I told him that I thought he should not write the document which he was preparing, if he intended in that document to state, as he said he had in *The Argus* newspaper, the facts; that he ought not to do it.

Q. Well, was anything said in that conversation in reference



to a proposed report or statement? A. Not in that conversation, Sir; I am going to give you the conversation.

Q. Just come to that, please? A. Yes, Sir; certainly. I saw Mr. Beecher again, and I told him that Theodore—

Mr. Evarts—Give us the date of this? A. I'm giving the date as near as I can.

Mr. Beach—He has said there were several interviews.

The Witness—In the week—within the week, Mr. Evarts, of the 12th and 20th.

#### BEECHER SEEKS A COMPROMISE.

Mr. Evarts—When was this? A. Within that week; between the 12th and 20th I saw Mr. Beecher, and I told him that Theodore seemed to be obdurate, that I thought I would have to treat him about as I treated him before—let him work himself out, and try to prevent publication if I could, or change the form, if I could, of the presentation; and I said to him, "Mr. Beecher, isn't there any member—" I said to him, "Mr. Beecher, can't we get an adjournment; can't we get an adjournment of the Committee of Investigation?" Said I, "Time is worth more than anything else in this business with Tilton;" and he said he would try to get a postponement of the meeting which was called for the succeeding Monday; said he would write to Mr. Sage and procure a postponement, and then I asked him if anything new had occurred to him since my last interview with him; and he said, "No;" and I said to him: "Mr. Beecher, I do not—I cannot recommend you to make any report to that Investigating Committee until I can get Theodore Tilton to commit himself to what you shall say;" and he was lying on his bed at the time, and he rose from it and went to a bureau and took a piece of paper and wrote a form of proceeding something like this: "Mr. Beecher having made a statement, and that being satisfactory, the paper——"

Mr. Evarts asked that the paper be produced.

Mr. Fullerton—Well, Sir, I will gratify you.

Mr. Evarts—You will satisfy the law.

Mr. Fullerton—Well, it is easier to do that than to satisfy you. [Laughter.]

[Paper handed to witness.]

The Witness [reading]: "The statement of Mr. B. being read and, if striking favorably, a word sent substantially thus to Committee."

Q. Is that the paper that he prepared? A. Precisely, Sir; I beg pardon.

Q. I understand you that this interview, when this paper was prepared that I have now produced, was at Mr. Beecher's house? A. Yes, Sir.

Q. And he got up from his bed to write it? A. Yes, Sir.

Mr. Fullerton—I offer it in evidence.

Q. It is in Mr. Beecher's handwriting, isn't it? A. It is.

Mr. Fullerton [reading]:

"The statement of Mr. B. being read and, if striking favorably, then a word sent, substantially thus, to Committee: [Extract.] 'I have been through years acting under conviction that I had been wronged, but was under the imputation of being the injurer. I learn from a friend that Mr. B., in his statement to you, has reversed this, and has done me justice.

I am willing, should he consent, to appear before you with him, and dropping the further statements which I felt it to be my duty to make for my own clearance, to settle this painful domestic difficulty, which never ought to have been made public, finally and amicably.'"

[Paper marked "Exhibit No. 49."]

Q. What, if anything, did Mr. Beecher propose when he handed you that paper? A. The substance of the paper itself—to make a statement to the Committee exonerating Mr. Tilton from all blame—from any injustice toward him from Mr. Beecher, and taking great blame upon himself on account of his conduct toward Mr. Tilton's family, and I said to Mr. Beecher, "Mr. Beecher, isn't there any member of your Committee beside Mr. Tracy, or isn't there any one in that Committee beside Mr. Tracy, to whom you can tell the truth; to whom I could tell it, or to whom Mr. Tracy could tell it, in order that they might guide the action of that Committee properly with reference to the fact itself? Couldn't you tell Mr. Sage?" and he said no, it would kill him. He said it almost killed him when he told him that he had been guilty of an offense; when he made the explanation that he did to him of that.

Mr. Evarts—That is Mr. Sage's? A. Yes, Sir. "Well," I said, "that is too bad; if you have not got one friend in that Committee to whom you can tell the truth, what is the use of your friends?" and that is the substance of what occurred.

Mr. Fullerton—Well, what did he wish you to do with this paper that I have just read? A. Wanted me to take it to Theodore Tilton.

Mr. Evarts—What did he say?

Mr. Fullerton—Yes, what did he say? That is the way he manifested what he wanted you to do, I suppose. Tell us what he said? A. Yes, Sir; he asked me to show that to Theodore Tilton, and I did show it to Theodore.

Q. And did you report to Mr. Beecher what Theodore said? A. I did; yes.

Q. And what did you report to him? A. I said to him that Theodore refused to consent to make himself out the victim of a hallucination; I think that was all.

Q. When was the next interview between yourself and Mr. Beecher? A. When was the next?

Q. Yes? A. I don't remember.

Mr. Beach—If he don't remember dates, refer him to the subject.

Q. Well, did Mr. Tilton publish his card? A. Yes, Sir; he published it on the 20th.

Q. On the 20th? A. I believe—no; he did not publish it on the 20th; he presented it to the Committee on the 20th.

Mr. Beach—You mean he presented his statement to the Committee on the 20th? A. He presented his report.

Q. His statement? A. Yes, Sir; he presented his statement. By Mr. Fullerton—Before the publication or the presentation of Mr. Tilton's statement to the Committee, did he prepare a proposed report to the Committee? A. Did who?

Q. Did Mr. Tilton present a proposed report for the Committee to make? A. Yes, Sir; Mr. Tilton did, and I submitted it on the first interview of the week of the 12th to Mr. Beecher, when I told him I thought I could induce or I would try and

induce Theodore to withhold the statement he was preparing from the Committee.

Q. And you showed him then, as I understand you, Mr Tilton's proposed report for the Committee to make? A. Yes, Sir; I submitted to him a paper which Mr. Tilton had prepared, and had expressed his willingness to abide by it before the Committee.

Q. Was this report to be made without statement by either party, or after this statement?

Mr. Evarts—What was said about it between you and Mr. Beecher?

The Witness—Mr. Beecher said to me, "Will Theodore stand by that?" I said that is what he would have done; I hope he will still be willing to do it."

By Mr. Fullerton—What was the subject of conversation then when he used that language? A. The very report which I showed to him of Mr. Tilton; I read it to him and handed it to him.

Q. A report for the Committee to make? A. Yes, Sir.

Q. [Handing paper to witness.] Look at that paper. Is that the paper you refer to? A. Yes, Sir; that is it.

#### TILTON TEMPORARILY MOLLIFIED.

Q. Now, then, in that conversation what was said in reference to the proposed statements of the respective parties? A. That they were to go before the Committee and make their statements.

Q. What statements? A. Statements of offense.

Q. Have you reference now to the proposed statement by Mr. Beecher just read in evidence, and the reply which he prepared to it? A. I have not any reference to that. That which I have just handed you was a report prepared by Theodore Tilton. I saw Mr. Beecher on that day, and I said to Mr. Beecher: "This will show you the mind Theodore has had upon this subject, and if it had not been for the publication of your correspondence, and the desertion of Theodore by his wife, he would not have been in the angry mood he is to-day, insisting upon the publication of the facts."

Q. By Judge Neilson—Was that before or after Mr. Tilton's statement had been given to the Committee? A. It was before, Sir.

Q. By Mr. Fullerton—I want you to state whether at the time of this conversation the statements which the respective parties were to make before the Committee were the subject of conversation; and if their character was then fixed, to state what they were to be? A. State that over again, if you please.

Q. You have now identified a proposed report that Mr. Tilton prepared for the Committee to make? A. Yes, Sir.

Q. And you showed it to Mr. Beecher? A. I did.

Q. And he asked you if Mr. Tilton would be satisfied with that? A. Yes, Sir.

Q. Upon what, or of what, was that proposed report to be predicated—in the shape of statements of the parties?

Mr. Evarts (to the witness)—What passed between Mr. Beecher and you?

Mr. Fullerton—I asked that; in that conversation what was said on that subject between you? A. I said to Mr. Beecher that after Mrs. Tilton had made her statement to the Committee, Mr. Tilton was very much incensed, and that Mr. Tracy in a subsequent interview with him—in an interview subsequent to Mrs. Tilton's report to the Committee, or statement to the Committee, had so presented to him the influence which her statement had had upon the Committee that it melted the anger all out of Theodore Tilton, and he was perfectly willing to make a statement to the Committee which should not contain the fact of adultery between Mr. Beecher and Mrs. Tilton; that he was perfectly willing, if Mr. Beecher would take great blame upon himself, and exonerate Theodore Tilton from dishonorable conduct towards him—from any injustice towards him—that he, Theodore Tilton, was perfectly willing to settle the matter without making any accusation before that Committee, and that he had prepared such a report for the Committee to make, and that he had shown it to General Tracy, and General Tracy had said to him, on the night of the conversion to which I refer, that the Committee seemed now to be of opinion that there was an offense, and that he thought it would not be hard to get from that Committee a report (unfavorable, it is true, to Mr. Beecher) on the ground of the offense, but which would really settle the whole business, and save all the parties concerned from dishonor in consequence of crime; that is all.

Q. And this report that you have identified is the one that you now speak of? A. That was one of them, Sir. There were two. One was a long one, and that was a short one.

By Mr. Evarts—Made at the same time? A. Yes, Sir; two. The short one was not submitted to Mr. Tracy.

[Paper marked for identification "No. 50."]

By Mr. Fullerton—[Handing paper to witness]—Look at the paper now shown you and say whether it is the other report prepared by Mr. Tilton at that time? A. This is the paper, if it is all here.

Mr. Fullerton—I offer the first report in evidence:

"Report. The Committee appointed to inquire into the offense and apology by Mr. Beecher, alluded to in Mr. Tilton's letter to Dr. Bacon, respectfully report that, after examination, they find that an offense of grave character was committed by Mr. Beecher against Mr. and Mrs. Theodore Tilton, for which he made a suitable apology to both parties, receiving in return their forgiveness and good-will. The Committee further report that this seems to them a most eminently Christian way for the settlement of difficulties, and reflects honor on all the parties concerned."

[The paper heretofore marked for identification No. 50 was here marked "Exhibit No. 50."]

Q. For fear we may not distinguish between those two reports, I want you to repeat what Mr. Beecher said when you showed to him, or read to him, the report I have just put in evidence? A. I said to him that Theodore had been in that frame of mind, and I hoped—

By Mr. Beach—What frame of mind? A. The frame of mind in which he wrote that.

Q. Well, state it? A. I said to him that that was what Theodore had been willing to do, as expressed in the statement, and I hoped that he would still consent to act in that way, and Mr.



Beecher said: "Well, do you think he will? I hope he will;" he said. That is all.

By Mr. Fullerton—Now, this frame of mind of which you have spoken on the part of Mr. Tilton I understand was superinduced by a report made to him of the effect of Mrs. Tilton's statement to the Committee? A. Yes, Sir

Q. What statement was that? A. All that I know of that statement was what Mr. Tracy read—the statement made to the Committee by Mrs. Tilton, a statement in which she had spoken highly, General Tracy said, of her husband.

Q. Not the long statement that was published? A. I don't know that it was.

Q. What was the result of all that? A. The result of it was nothing.

Q. That report was not made, as I understand you?

Mr. Evarts—The witness has said there was another statement also there.

The Witness—Another statement also where?

Mr. Evarts—Before you at this time.

The Witness—No, Sir; I don't say there was another statement also before me at this time. I spoke to Mr. Beecher of a report which Theodore Tilton had been willing to make, and I didn't show that report to Mr. Beecher; I did not have it with me. I happened to have this in my pocket, which I submitted to him.

Mr. Evarts—I misunderstood you.

By Judge Neilson—You didn't have it with you? A. No, Sir; I didn't have it with me.

By Mr. Evarts—I think the stenographer's notes will show that there were two reports. [To the witness.] You spoke to Mr. Beecher about the long statement? A. I did speak to Mr. Beecher about it at that time.

By Judge Neilson—But you hadn't it with you? No, Sir.

Q. The paper you had with you was the one that has been read? A. Yes, Sir.

By Mr. Evarts—This short one was not shown to Gen. Tracy? A. I don't remember that it was; I could not swear that it was.

Q. You said something about some paper having been shown to Mr. Tracy? A. Yes, Sir; it was the long statement.

Q. And not the short one? A. I don't think the short one was shown. The short one was the substance of the long one, but I don't think it was shown.

[The long statement referred to by the witness was marked for identification "No. 51."]

By Mr. Fullerton—You have spoken of a card in *The Argus* published by Mr. Tilton. [Handing witness a paper.] Look at the paper now shown you and say whether that is the card referred to. A. Yes, that is the one.

Mr. Fullerton—I offer it in evidence.

Mr. Evarts—We object to this, if your Honor please. We have had no evidence from this witness connecting Mr. Beecher with this article.

Judge Neilson—This is the long statement.

Mr. Evarts—No, Sir; it is a newspaper article from Mr. Tilton, published in a newspaper, whether it had any other authenticity

than that I don't know, but nothing has been said by the witness which connects Mr. Beecher with it.

Judge Neilson—[To Mr. Fullerton]—How have you connected Mr. Beecher with it?

#### TILTON AGAIN ANGERED.

Mr. Fullerton—Something has been said by the witness with reference to it, and to make it clear, I will ask the witness a question in regard to it. [To the witness]:

Q. Between the 13th and the 20th of July, 1874, when these proposed statements were suggested to you, was anything said, and if so, what, about Theodore Tilton's card in *The Argus*? A. Yes, Sir; I told Mr. Beecher that Mr. Tilton never would have written that card if it had not been for the publication of his correspondence with the Committee and the desertion of his wife, and I said to Mr. Beecher at that interview, "Don't you know that you are doing yourself, or are liable to do yourself, a great hurt by keeping Elizabeth away from Theodore? Don't you know perfectly well the influence that that woman has had over him? If you keep her away from him it will only incense him, and you ought to send her back to him," and he said, "That can be arranged if this other matter is fixed up properly."

Mr. Evarts—I still don't see any connection between it and Mr. Beecher.

Mr. Fullerton—What other matter? A. The statements.

Mr. Evarts—I don't see any relevancy to that.

Mr. Fullerton—Why, Sir, this paper which was published on the 13th of July, 1874, caused this action on the part of Mr. Beecher in reference to those statements, the one he proposed to make, and the one he prepared for Theodore Tilton to make. It was to avert this blow, threatened in this card, and hence it becomes material in this case.

Judge Neilson—I don't see it so; I don't think it is.

Mr. Fullerton—Well, I must offer it in another point of view, so that it will appear as a part of the record, because it makes the first statement of Mr. Moulton which your Honor has ruled out all the more important and significant. The reporter will please enter an exception to that last ruling.

[Paper marked for identification "No. 52."]

Q. [Handing paper to witness]: Tell me whether the paper now shown you was received by you? A. Yes, Sir; it was.

Q. About the time of its date. A. Yes, Sir.

Q. Did you show it to Mr. Beecher? A. I did; yes, Sir.

Q. Did you read it to him, or did he read it—which? A. I don't know whether he read it, or whether I read it to him. It was either read to him, or he read it himself.

Q. When did you read it to him—how soon after its receipt? A. I don't remember, Sir, how soon after its receipt; some time after.

Q. Within what time? A. I should think within a month. I remember the conversation—something of the conversation on that subject.

Q. I want you to tell the conversation you had with Mr. Beecher with reference to that letter? A. It was

with regard to the difficulties of *The Golden Age*. [To Mr. Fullerton]—Will you let me look at the letter again?

Mr. Fullerton—Certainly.

The Witness [after examining the letter]—I am not sufficiently clear about that to swear in regard to it.

Mr. Evarts—What is this? A. I am not sufficiently clear that is the letter I showed to Mr. Beecher. I have several letters from Mr. Clarke.

Q. You are not clear this was shown to Mr. Beecher? A. No, Sir; I am not clear in regard to that. I want to correct my statement in regard to that. That the letter was a subject of conversation I am sure, but that I showed it to him I am not sure.

Mr. Fullerton—You are not sure you showed it to him? A. No, Sir.

Mr. Evarts, to Mr. Fullerton—Well, read it?

Mr. Beach—Well, I don't know.

Mr. Fullerton—I will not read it.

Mr. Evarts—Very well, say so.

Mr. Fullerton—I have said so; if I read it, it would be because it was proper evidence, and not because you commanded it. [To the witness]—Did you receive several letters from Mr. Clarke? A. I received several letters from him.

Q. And you are not able to state whether this is the one you showed Mr. Beecher? A. No, Sir; I am not able to say this is the one I showed Mr. Beecher.

Mr. Evarts—I desire that this statement should be marked for identification.

Mr. Fullerton—I don't desire that it shall be marked for identification.

Mr. Evarts—It has been shown the witness.

Judge Neilson—If he cannot identify it, counsel has a right to withdraw it.

Mr. Evarts—He has identified it originally as a letter shown to Mr. Beecher, and he now says he is in doubt whether it was shown to Mr. Beecher, but it was made the subject of conversation with Mr. Beecher. I want it marked for identification.

Judge Neilson—That leaves it to the counsel to withdraw the paper.

Mr. Evarts—He withdraws the evidence. It should be in evidence that this letter was the subject of conversation between Mr. Beecher and this witness.

Judge Neilson—And the conversation not being given, as yet, I think he may withdraw the letter.

Mr. Evarts—If your Honor will note my exception.

Judge Neilson—Yes, Sir.

Mr. Evarts—I ask that it be marked for identification, as a letter placed in witness's hands, and concerning which he has testified. Your Honor rules it out, and we except, of course, to your ruling.

#### BEECHER'S CONTRIBUTION TO TILTON'S PAPER.

Mr. Fullerton—Who was this Mr. Clarke, of whom you have spoken? A. Mr. Clarke was associated with Mr. Tilton in *The Golden Age*.

Q. State, if you please, what you mean by *The Golden Age*?

A. *The Golden Age* newspaper.

Q. Published where? A. Published in New-York.

Q. By whom? A. By Theodore Tilton.

Q. And when was it started? A. It was started in 1871.

Q. About what time in that year? A. In March.

Q. How long did it continue to be published? A. It is being published now, I think, but not with Theodore Tilton as publisher and proprietor. It changed hands some time ago.

Q. Did you ever have any conversation with Mr. Beecher about *The Golden Age*? A. Yes, Sir.

Q. When was the first conversation? A. The first conversation about *The Golden Age* was in the beginning of 1871, I think, before the establishment of it.

Q. What was that conversation?

Mr. Evarts—How is that material, if your Honor please? It may be material, of course, by what was said.

Judge Neilson [to Mr. Fullerton]—Did you ask what was said?

Mr. Fullerton—Yes, Sir. [To Mr. Evarts.] That is the way to learn how it becomes material, to listen.

Judge Neilson—Go on.

The Witness—He said he hoped Theodore would be successful in the enterprise, and he said he would like to aid, if he could, in establishing the paper, and I told Theodore of that, and Theodore said to me he could not receive any aid from Mr. Beecher in establishing the paper, and so I told Mr. Beecher. I said to Mr. Beecher that was what Mr. Tilton said. That is the first conversation I remember about it.

Q. At any subsequent interview did you have a further conversation with Mr. Beecher about *The Golden Age*? A. Yes, Sir.

Q. When was that other interview? A. The other interview was in 1873—the beginning of 1873, I think.

Q. State what it was? A. The paper was dragging—I said to Mr. Beecher that the paper was dragging, and that Mr. Clarke was trying to manage something about its purchase, that Theodore felt bitter about the paper, about its condition; that it was not prosperous as it should be, and that he wanted to write a book, and then Mr. Beecher said that he would like to help the paper, and I said to him: "Mr. Beecher, I don't see how you can help the paper; I don't see how you can subscribe any money to *The Golden Age*, and I told him that Mr. Tilton would not take any money from him—would not allow me to take any money from him, directly or indirectly, and I didn't see how it was possible for him to do anything; that that matter had better be dismissed; and then I saw him subsequently, and the talk was renewed from time to time, and as far down as to May the 3d.

Q. What year? A. 1873, I think was the year, and Mr. Beecher said to me, between January 4th and May, 1873, that he thought I could take some money and give it to Theodore Tilton as my own, and that he would not know where it came from, and he would like to have me do it. I told him I didn't want to do it; I could not do it honorably, in my opinion. Well, he said, that certainly bread ought to be kept in Theodore's mouth, that I ought to take some money from him (Beecher), and feed it out to him; that he (Beecher) could get a mortgage very readily, and give me \$5,000, and I said: "Well, I don't want to take it;" but afterwards I did take it, and I did feed it out to



*The Golden Age* and to Theodore. I told Mr. Beecher that Mr. Tilton was at work upon his book, and very much interested in that, that I was very glad of it. He said he was very glad too, and he would be glad to assist him in keeping him to work at it. Finally I took the money.

Q. When did you receive it? A. May 2d, 1873, I think it was.

Q. What was the amount? A. \$5,000.

Q. And how was it given to you? A. In bills.

Q. Did you give it to him all at once? A. No, Sir.

Q. Where did you deposit it? A. With Woodruff & Robinson, the firm of which I am a member.

Q. State whether Theodore Tilton knew that you had received that money from Mr. Beecher? A. No, Sir; he never knew it.

Q. When did he learn it first? A. He learned it after the publication of my first statement, in which the fact was stated.

Q. You never communicated it to him before? A. No, Sir; never. I told Mr. Beecher that Mr. Tracy wanted me to communicate it to him in order to prevent the publication of his statement.

Q. I am coming to that. Go on and state what that was? A. Before the publication of Mr. Tilton's statement of July 20th Mr. Tracy was at my house—

Mr. Evarts—Well, we object to that—a conversation between him and Mr. Tracy.

Mr. Fullerton—Was Mr. Beecher there? A. No, Sir; I communicated the facts to Mr. Beecher.

Mr. Evarts [to the witness]—What passed between you and Mr. Beecher?

Judge Neilson—Yes, Sir; but preliminary to that is it proper to say he saw Mr. Tracy at his house, and that he had the communication afterwards?

Mr. Fullerton—Did something take place between you and Mr. Tracy? A. Yes, Sir.

Q. Did you communicate that, whatever it was, to Mr. Beecher? A. Yes, Sir.

Q. What did you communicate to Mr. Beecher? A. I told Mr. Beecher that Mr. Tracy wanted me to communicate the fact that I had received \$5,000 from Mr. Beecher to give Mr. Tilton, in order to stop him from the publication of his statement. I said, when Mr. Tracy wanted me to tell Mr. Tilton that, that that would be a serious embarrassment to me personally, in consequence of my having received that money, and I said to Mr. Beecher that I told Mr. Tracy that I was perfectly willing to be guided by him with sound advice—with any moral, good reason—with any good reason, and I would co-operate with him to induce Theodore Tilton not to publish his statement, but I would not, on any such ground as that, undertake to stop its publication. Mr. Tracy told me that would cause me trouble if it was published, and I told him if it caused me trouble, it must cause me trouble; that I had done no wrong and I didn't fear any trouble that would come from that.

Mr. Evarts—You told that to Mr. Beecher? A. Yes, Sir.

Mr. Fullerton—What reply did Mr. Beecher make to that when you told it to him? A. I don't remember any reply that he made particularly; I don't remember any reply that he made.

#### POINTS PREVIOUSLY TOUCHED REVIEWED.

Mr. Fullerton [addressing Judge Neilson]—In the course of the communication we had to omit some papers because we hadn't them present. I now show those papers thus submitted to the witness for the purpose of having them identified.

Q. [Handing paper to witness.] What is that paper you hold in your hand? A. This is Mr. West's letter to Mr. Beecher of June 25th.

Q. From whom did you receive it? A. I received it from Mr. Beecher.

Q. [Handing another paper to witness.] Now, pray tell me what that paper is? I need not ask that question, however. The copy has been put in evidence, and I agreed to supply the original.

Judge Neilson—He may say if that is the original.

The Witness—That is in Henry Ward Beecher's handwriting Mr. Evarts—The card to *The Eagle*?

The Witness—Mr. Beecher sent the card to *The Eagle* with out my knowledge of it afterwards, after it had been agreed upon. That is his handwriting.

Mr. Fullerton—I now offer the first paper in evidence. [Reading].

NEW YORK, June 25th, 1873.

Rev. H. W. BEECHER:

DEAR SIR: Moved by a sense of duty, as a member of Plymouth Church, I have decided to prefer charges against Henry C. Bowen and Theodore Tilton, and have requested Brother Halliday to call a meeting of the Examining Committee in order that I may make the charge before them.

Thinking that you would, perhaps, like to be made acquainted with these facts, I called last evening at Mr. Beach's house, where I was informed that you had returned to Peekskill.

I therefore write you by early mail to-day.

Yours, very truly,

WM. F. WEST.

(Copy letter marked "Exhibit No. 53.")

Mr. Fullerton—If the Court please, I now offer the original of Mr. Beecher's card to *The Brooklyn Eagle*.

Judge Neilson—Which we had reference to the other day?

Mr. Fullerton—Which was read the other day, and which I did not produce.

Mr. Evarts—As we understand that card which was undertaken to be read from *The Eagle*, it appeared in the evidence that it was altered by the editor, if your Honor will remember; therefore it was not really Mr. Beecher's card, and they had not the original of that, but my recollection is that that had relation to the Woodhull matter, and this has nothing to do with that.

Mr. Fullerton—No, Sir, this is the one.

Mr. Evarts—It has not anything to do with the other. It is not the matter that was referred to there.

Mr. Fullerton—It is the original, as far as there is any original.

Mr. Evarts—It has not anything to do with it. It is an original paper, and may be proper evidence, and may be now offered for aught I know, but this is not the paper, as I understand it.

Judge Neilson—You have in mind that it was a paper that related to something else—the Woodhull paper?

Mr. Evarts—Yes, Sir.

Mr. Fullerton—Having got the paper from *The Brooklyn Eagle*,

in evidence, and having produced the original, so far as there is one, I have discharged my duty and fulfilled my obligation, and if you (Mr. Evarts) don't want it read, leave it out.

Mr. Evarts—This is another card, and has been in evidence.

Mr. Fullerton—Yes; but I promised to produce the original of Mr. Beecher's. If you complain that I have fulfilled my promise, then I am sorry I made it. I now produce the original of the article as printed in *The Eagle*, which the gentlemen from the other side desired. You (Mr. Evarts) called for the paper itself in which it was published.

Judge Neilson—The card which you read in reference to *The Eagle* commenced with the fact that *The Eagle* had not been in accordance with Mr. Beecher?

Mr. Evarts—We waived that when you [Mr. Fullerton] showed us in the paper what was a copy. We didn't care for the original *Eagle* article. Then you began to read what was supposed generally was prepared by Mr. Beecher, but it appeared it was not.

Judge Neilson—There were some alterations made in it.

Mr. Fullerton—And hence I now produce that one prepared by Mr. Beecher.

Mr. Evarts—Not a bit of it. That is what was in *The Eagle*, just as what you read was from *The Eagle*.

Mr. Fullerton—And you called for the original of the Beecher article, and I have produced that.

Mr. Evarts—No, you are mistaken in thinking this original paper you have brought here has anything to do with that.

Judge Neilson—We understand that.

Mr. Fullerton—I will forgive my friend on the other side, and we won't go any further with that. I offer now in evidence the article as published in *The Brooklyn Eagle*.

Mr. Evarts—That we object to. It has been ruled out once.

Judge Neilson—Mr. Fullerton, how do you connect Mr. Beecher with it?

Mr. Fullerton—I think it is in evidence already.

Judge Neilson—Does not that card commence with reference to the fact that *The Eagle* had not been in accord with Mr. Beecher?

Mr. Fullerton—Yes, Sir.

Judge Neilson—That is the one you read.

Mr. Beach—It was partly read, I recollect, and then objected to on the ground that it had been altered after preparation by Mr. Beecher. It was then withdrawn, and the original, as prepared by Mr. Beecher, was read.

Judge Neilson, to Mr. Beach—You think, then, it was not all read.

Mr. Beach—It was not all read, as I recollect the course of the evidence, and now we propose this as it was published and afterward submitted to Mr. Beecher on his return from a temporary absence, and adopted by him.

Mr. Evarts—That may be, and that is new evidence.

Judge Neilson—Very well, we will take it in that view.

Mr. Evarts—He has not said that yet.

Judge Neilson—We will come to that.

Mr. Fullerton, [Beginning to read]—"To the Editor of the *Brooklyn Eagle*—

Mr. Evarts—We don't understand that this is material,

Judge Neilson—Counsel suggests he will connect Mr. Beecher with it.

Mr. Fullerton—He has already connected him with it, but I will do it over again.

Q. What did Mr. Beecher say to you in reference to the article published in *The Brooklyn Eagle*? A. He thanked me for it.

Mr. Beach—He said that before.

Mr. Fullerton—He said that emphatically and distinctly.

Judge Neilson—This article? A. Yes, Sir.

Mr. Fullerton—(Reading.)

*To the Editor of the Brooklyn Eagle:*

In a long and active life, it has rarely happened that *The Eagle* and myself have been in accord on questions of common concern to our fellow-citizens. I am, for this reason, impelled to acknowledge the unsolicited confidence and regard of which the columns of *The Eagle* of late bear testimony. I have just returned to the city to learn that application has been made to Mrs. Victoria Woodhull for letters of mine supposed to contain information respecting certain infamous stories against me. I have no objection to have *The Eagle* state, in any way it deems fit, that Mrs. Woodhull, or any other person or persons who may have letters of mine in their possession, have my cordial consent to publish them. In this connection, and at this time, I will only add that the stories and rumors which have for some time past been circulated about me are grossly untrue, and I stamp them in general and in particular as utterly false.

Respectfully,

HENRY WARD BEECHER

[Paper marked "Exhibit No. 55."]

Q. In one part of your testimony you speak of a statement read to Mr. Beecher and used this observation: "I will read one clause from it, and if you can stand that you can stand the whole of it, or any part of it," or words to that effect. You stated it referred to a letter of Mrs. Tilton, or a statement of Mrs. Tilton to Dr. Storrs. [Handing paper to witness.] Look at the paper which I now show you, and say whether that is the paper to which you referred? [To Judge Neilson.] The presentation of this paper was deferred, because it was not present at the time. As I stated to your Honor, we have been a little embarrassed by the unfortunate and serious illness of Judge Morris.

The Witness—Yes, Sir, that is the letter.

Mr. Evarts—If your Honor please, we can look at this paper during the recess.

Judge Neilson—Yes, Sir. [To the jury.] Gentlemen, you can retire, and please be in your seats at 2 o'clock.

#### MRS. TILTON'S TRUE STORY.

The day's session was resumed at 2 p.m., pursuant to adjournment.

Mr. Fullerton—I now offer in evidence the paper which was shown the witness before the recess.

Mr. Evarts—What has he testified to about that?

Mr. Fullerton—He referred to it, and I called his attention to that reference and asked if this was the paper to which he made that reference.

Mr. Evarts—This is a paper concerning which all that appears from its face is that under the date of December 16, 1872—or the 15th; I don't know which it is—it is signed by Mrs. Tilton and is, I suppose, in her handwriting, isn't it?



Mr. Fullerton—Yea.

Mr. Evarts—It is not addressed to any person, and I do not understand any present state of the testimony that connects it with Mr. Beecher. I may perhaps be inadvertent to something that has been said by this witness, but nothing has been presently said on the subject.

Judge Neilson—What is your view about it, Mr. Fullerton?

Mr. Fullerton—In one stage of Mr. Moulton's testimony, he related an interview between himself and Mr. Beecher and Mr. Tilton, when Mr. Tilton read to him a statement, or a part of a statement, that he proposed to make, saying, "I will read you one extract from it, and if you can stand that you can stand the whole." And I think the language was made use of as having been quoted from the statement of Mrs. Tilton, made to Dr. Storrs, and my friend upon the other side called for that statement because a quotation was made from it. I now produce the original statement from which the language was borrowed, namely, the statement of Mrs. Tilton to Dr. Storrs, or which was used in that conversation with Dr. Storrs.

Judge Neilson—I do not think that is sufficient.

Mr. Evarts—Your Honor, we will consider upon it. [To Mr. Fullerton.] Can you turn to that part of the evidence?

Mr. Fullerton—I could not now. I will ask the witness, then, a further question.

Mr. Evarts—Your Honor will remember, as my learned friend has stated, that there was a long statement—what has sometimes been called the "true story"—which it was said was read to Mr. Beecher.

Judge Neilson—And it was finally allowed to be given as a conversation.

Mr. Evarts—Yes, Sir; your Honor finally allowed a certain passage out of it. The paper we did not have here, you remember.

Judge Neilson—No.

Mr. Evarts—A certain passage out of it was permitted to be given in evidence.

Judge Neilson—As a conversation merely.

Mr. Evarts—As a conversation.

Judge Neilson—I said to Mr. Fullerton, I do not think that draws his letter in. If you adhere to your objection, I will rule it out.

Mr. Evarts—Yes, I am going to see how we stand.

Mr. Fullerton—It is ruled out.

Mr. Evarts—No; it is not ruled out.

Judge Neilson—I say, if he stands upon the objection I will rule it out.

Mr. Evarts—And I have asked, for the sake of information, what he stated in the evidence. [Referring to the stenographer's minutes.] Mr. Fullerton says, after the discussion between us, "Go on and state the communication. What did Mr. Tilton say to Mr. Beecher upon that occasion? A. Mr. Tilton said to Mr. Beecher, 'Mr. Beecher, there is one thing in this statement, which, if you can stand, you can stand any part of it. Elizabeth has stated that you solicited her to become a wife to you, together with all that that implies, and I will read to you that part of the statement.'"

And he did read to Mr. Beecher that part of the statement. Now, where does this letter come in, to that?

Mr. Morris—That is from this statement.

Mr. Evarts—Where is the witness' statement that it is from this?

Mr. Fullerton—I don't know where it is. I know it is there somewhere.

Mr. Evarts—I don't see it.

Mr. Fullerton—I will withdraw it then; it takes so much time.

Mr. Evarts—No, if your Honor please. You will hear what I have to say about it.

Mr. Fullerton—I withdraw it.

Mr. Evarts—Well, you don't withdraw it on my objection unless you hear what I have to say.

Mr. Fullerton—I withdraw it on your objection, and on the delay which follows it.

Mr. Evarts—My delay is my own affair.

Mr. Fullerton—And partly mine.

Mr. Evarts—Now, if your Honor please—

Mr. Beach—What is the gentlemen speaking to? We have withdrawn the offer.

Mr. Evarts—Perhaps I shall speak to that.

Mr. Beach—To our withdrawal of the offer?

Mr. Evarts—Yes, Sir. Now, if your Honor please, the counsel has informed us that there was some connection of this paper with what was legitimately in evidence, and that that connection was found in the examination of this witness concerning the "true story" that was read, and that it was stated that the passage in the "true story" which was called to Mr. Beecher's notice and concerning which he was told if he could stand that he could stand anything that there was in the proposed publication—that that passage was an extract from this letter. That is the statement as you make it.

Mr. Beach—Oh! no.

Mr. Fullerton—And which you deny.

Mr. Evarts—Now, if that be so in the evidence, then the paper may be admissible. I have turned to this passage of the examination of the witness, and I do not find anything of the kind.

Judge Neilson—I do not recollect any statement referring to this letter in that conversation.

Mr. Evarts—Now, of course the counsel has a right to withdraw the paper entirely.

Mr. Beach—There is a slight mistake in the statement of the counsel which I think should be corrected. Your Honor did not permit any part of that statement to be read, merely ruling that the witness could state the conversation that occurred between him and Mr. Beecher without reference to the statement. You ruled it all out.

Judge Neilson—I do not recollect that this letter was referred to in that connection. You will withdraw it, then, for the present.

Mr. Fullerton—We withdraw it, yes, Sir, on the objection being made upon the other side.

Mr. Evarts—No.

Mr. Fullerton—I know my reason for withdrawing it better

than you do, and that is because you object and spend a good deal of time about it. Now, do you withdraw your objection to this paper?

Mr. Evarts—I do.

Mr. Fullerton—Then we will consider whether we put it in; and having another paper in the hands of the witness I will go on with the testimony upon that point.

Q. What paper have you in your hand now? A. A letter from Mr. Beecher, Sir.

Q. Addressed to whom? A. To me.

Q. Was it received by you? A. It was; yes, Sir.

Q. About the time of its date? A. Yes, Sir.

Mr. Fullerton—I offer it in evidence. It is one of those letters, Sir, which was mislaid and was not put in in its proper order. Shall I read it, Mr. Evarts?

Mr. Evarts—I think so.

Mr. Fullerton (reading)—

MY DEAR FRIEND: I sent on Friday or Saturday the portrait of Titian to the store for you. I hope it may suit you.

I have been doing ten men's work this Winter—partly to make up lost time, partly because I live under a cloud, feeling every month that I may be doing my last work, and anxious to make the most of it. When Esau sold his birthright he found "no place for repentance, though he sought it carefully with tears." But I have one abiding comfort. I have known you, and found in you one who has given a new meaning to friendship. As soon as warm days come I want you to go to Peekskill with me.

I am off in an hour for Massachusetts, to be gone all the week.

I am urging forward my second volume of "Life of Christ," for "the night cometh when no man can work."

With much affection and admiration, yours truly,  
March 25, 1872, Monday morning. H. W. B.

[Marked "Exhibit No. 56."]

Mr. Fullerton—The objection being withdrawn to this paper, which I offered a moment since, I now read the paper in evidence. [Reading.]

DECEMBER 16, 1872.

In July, 1870, prompted by my duty, I informed my husband that H. W. Beecher, my friend and pastor, had solicited me to be a wife to him, together with all that this implied. Six months afterward my husband felt impelled by the circumstances of a conspiracy against him, in which Mrs. Beecher had taken part, to have an interview with Mr. Beecher.

In order that Mr. B. might know exactly what I had said to my husband, I wrote a brief statement (I have forgotten in what form) which my husband showed to Mr. Beecher. Late the same evening Mr. B. came to me (lying very sick at that time) and filled me with distress, saying I had ruined him, and wanting to know if I meant to appear against him. This I certainly did not mean to do, and the thought was agonizing to me. I then signed a paper which he wrote, to clear him in case of a trial. In this instance, as in most others, when absorbed by one great interest or feeling, the harmony of my mind is entirely disturbed, and I found on reflection that this paper was so drawn as to place me most unjustly against my husband, and on the side of Mr. Beecher. So, in order to repair so cruel a blow to my long-suffering husband, I wrote an explanation of

the first paper and my signature. Mr. Moulton procured from Mr. B. the statement which I gave to him in my agitation and excitement, and now holds it.

This ends my connection with the case.

ELIZABETH R. TILTON.

P. S.—This statement is made at the request of Mr. Carpenter, that it may be shown confidentially to Dr. Storrs and other friends with whom my husband and I am consulting.

[Marked "Exhibit No. 57."]

Mr. Beach—Is there any date to it?

Mr. Fullerton—Yes; I gave the date.

Mr. Beach—What was it?

Mr. Fullerton—Dec. 16, 1872.

Mr. Shearman—You give it as Dec. 15?

Mr. Fullerton—Yes, Sir; it is so printed.

Mr. Evarts—I ask your Honor's and the Jury's attention to the change of date there.

Mr. Shearman—It was originally written "15th," but is altered to "16th."

Mr. Evarts—It is a question of the inspection of the paper.

Mr. Fullerton—I may say, with as much propriety, that it was written the 15th, and remains the 15th still.

Mr. Evarts—Which way do you put it?

Mr. Fullerton—I don't put it any way.

Mr. Evarts—Then the paper will speak for itself, if you don't speak for it.

Mr. Fullerton—I don't speak for it.

Mr. Evarts—I suppose the paper will speak for itself.

Mr. Fullerton—Then you should not say anything more about it.

Mr. Evarts—Well, we want to understand it.

Mr. Fullerton—Well, if you think there is a point there, you are entitled to all the advantage of it. I don't see, myself, that it makes any difference whether it is the 15th or 16th. It looks like either.

Mr. Evarts—Well, we will see.

Mr. Fullerton—Commencing on Dec. 26, 1870, and ending with the investigation before the Committee of Plymouth Church, how frequently did Mr. Beecher, as near as you can now state, visit you at your house? A. Very many times, Sir; he was the most frequent visitor with the exception of my partner, who came every morning to the house.

Q. Well, give the jury some idea of the frequency of his visits when he was in the city? A. In the first part of 1871 he was at my house about every day, Sir, and sometimes twice a day; and after I returned from the South, March 2, he came there frequently when he was in town; it is very hard for me to express how frequently; sometimes once a day and sometimes twice a day, and in 1872 the same.

Q. And at what hours during the day? A. No particular hours; he would come in the morning and come in the evening, and come on Sundays.

Q. How early in the morning? A. He would come sometimes before I was out of bed, Sir.



Q. And how late at night? A. After his Sunday service, and very late during the evenings of the week.

Q. At how late an hour in the evening have you known him to call? A. I have known him to come after church service, between 9 and 10 o'clock.

Q. If he visited you at your place of business in New-York, state the fact? A. Yes, Sir.

Q. How frequently did he visit you there? A. Not very frequently, Sir; he was not a regular visitor at the office; he would come when an emergency demanded it; as, for instance, during the sessions of the Council, he came to see me after the Storrs speech.

Q. When did his visits cease, either at the house or store? A. I think, Sir, that he did not come to my house after the 13th of July, 1874; I think that was the last date.

#### MOULTON OFFERS AN EXPLANATION.

Q. You called my attention during the recess to a correction that you wanted to make in your testimony; you are at liberty to do that now. A. Yes, Sir; it is with regard to the West charges; I seem to have confused the letter of Mr. West of June 25 with the charges that Theodore Tilton brought to my house in the Fall; I don't know that it amounts to very much, yet I thought it best to correct it; I say that I talked with Mr. Beecher about the charges of West; it was about the letter of West of June 25.

Q. The one that has been put in evidence to-day? A. Yes, Sir.

Q. And what was it that he wanted to go over until after vacation? A. The investigation that West had notified him of.

Q. And when did you see the charges? A. In the Fall, I believe.

Q. The Fall subsequent to this letter of the 25th of June? A. Yes, Sir.

Q. And it was then in the Fall that you called Mr. Beecher's attention to the charges? A. Yes, Sir; I had a conversation with him about the charges. I didn't show him that paper.

Mr. Fullerton—If your Honor please, that closes the direct examination of Mr. Moulton, but at the same time I desire to say to your Honor that in the great number of exhibits that we have been compelled to handle, and the great number of subjects to which we have been compelled to call the attention of the witness, we may have omitted something, and I wish it understood now that there is nothing reserved upon our part at all intentionally, and if anything is omitted it is entirely unintentional.

Judge Neilson—If it appears to be inadvertent you will be able to correct it.

Mr. Evarts—I now ask you to produce the original of the paper that we asked from you which was read from Mr. Morris's notes, as I remember.

Mr. Fullerton—If you will indicate what that is.

Mr. Evarts—The proposed card by Mr. Tilton, which embodied some part of what is called by your witness a letter of contrition. We allowed you to read from Mr. Morris's copy that he has made for the purpose of his opening, I suppose.

Mr. Fullerton—I read the original of that letter.

Mr. Evarts—No, you did n't.

Mr. Fullerton—I did, certainly.

Mr. Evarts—We understand—the card.

Mr. Fullerton—If you will turn to the testimony.

Mr. Evarts—We all remember perfectly about it. Mr. Morris handed over some paper that was in his hand, writing, and I said, "To save time we will let you read that, you undertaking to bring the original." We have asked for it three times.

Mr. Fullerton—Well, you are certainly entitled to it, if that is the condition of things, and shall have it.

Mr. Evarts—As you are now resting, of course we want it.

Mr. Fullerton—There is the paper you called for [handing a paper to Mr. Evarts].

Q. Mr. Moulton, look at that paper which is now shown you, and say whether it is the original proposed card of Mr. Tilton to be published in *The Brooklyn Eagle* [handing witness the paper]? A. Yes, Sir; I have seen this before on the stand; yes, that is it.

Judge Neilson—Has it been marked?

Mr. Evarts—The substitute was marked.

Mr. Morris—It is "Exhibit 25."

Mr. Evarts—The witness states that this is Mr. Tilton's handwriting.

Mr. Morris—That is Mr. Tilton's handwriting? Yes Sir.

Mr. Evarts—This is to be substituted for that.

[The paper now produced is marked "Exhibit No. 25," in place of the copy heretofore marked "Exhibit No. 25."]

Mr. Evarts—Now, I ask your Honor's attention to this correction that the witness has made. Certain papers were produced, to wit, a summons and a copy of the proposed charges or actual charges made by Mr. West and the witness testified to a conversation which he had with Mr. Beecher concerning those charges as there set down, and that one part of the conversation—no matter for any of the rest of it for the purpose, at present—is that Mr. Beecher wanted the consideration of them postponed until after the vacation. Well, now, upon his correction, there was no such paper in existence before the vacation, and there was therefore no conversation between him and Mr. Beecher about that paper as of the date which he has given for it; and if the correction that he makes is allowed, takes place—of course it is allowable for the witness to correct himself—why, all the evidence on the subject of a conversation concerning those papers with Mr. Beecher, on which alone the making

them evidence was permissible, falls through. Now, whether my learned friend is able or expects to recall the matter as evidence by conversations concerning them at a later date I do not know; it is for him and his witness between the n to determine; but at present the correction, as it seems to me, strikes out all the evidence concerning a supposed conversation with Mr. Beecher regarding those papers.

Judge Neilson—And applies it to the letter.

Mr. Evarts—That is for him to say, whether he applies it.

Mr. Beach—He has said it.

Mr. Evarts—Well, but the letter does not contain the charges. How can he talk about it? It is not in existence.

Mr. Fullerton—It certainly must relieve the embarrassment of the witness, having fallen into such an error, when he finds that the learned counsel have fallen into a still greater one about a very recent transaction, because he misapprehends the testimony as originally given as well as the correction now made. The correction is this, that in speaking of the West charges, he spoke of them as having been sent to him at about the same time, whereas he says now the letter of Mr. West addressed to Mr. Beecher, saying that he was going to make charges, was the first one that was sent to him, and that it was with reference to it, and to it alone, that he had the conversation with Mr. Beecher in the first instance, when Mr. Beecher wished the examination which was then threatened to go over until after the vacation—until the Autumn. Now, so far as the conversation which he related as having taken place in the Summer, it relates to that paper, the witness says, and not to the charges.

Judge Neilson—So I understand now.

Mr. Fullerton—And that the charges came the following Autumn, and that he then showed them to Mr. Beecher, and that the conversation which refers to the charges did not take place then, but took place in the Autumn.

Mr. Evarts—That is what he has not said.

Mr. Fullerton—Yes, he has said just that.

Mr. Evarts—That is, I think, what he may say some time or other, but he has not said it yet. Your Honor will see what the examination was. [Reading from the testimony of Jan. 15]

Mr. Evarts—Well, what occurred, if you please? A. Mr. Tilton brought around to my house the charges of Mr. West about that time.

Mr. Fullerton—Look at the paper now shown you, and say whether it contains the charges thus produced to you by Mr. Tilton.

Mr. Evarts—Does he name that as the paper that was produced?

Mr. Fullerton—I say that.

Mr. Evarts—I assume you are going to correct it.

Mr. Fullerton—Oh! certainly.

The Witness—Yes, Sir; that is the paper.

To the Court—He had an actual paper.

Q. State whether you showed those charges to Mr. Beecher? A. I don't remember that I did.

Q. How? A. I don't remember that I showed them to Mr. Beecher.

Q. Did you have any conversation with him in regard to it? A. Yes, Sir, I had conversation with him in regard to it.

Q. What was that conversation? A. He said that the whole matter had better go over until Fall, and in the mean time during the vacation I thought we could get along with that subject—try to find a way. I told him I should recommend—

Mr. Evarts—I understand that this is one of the papers that Mr. Tilton brought you; these very papers? A. Those are the papers—that is, as I remember.

Q. You showed them to Mr. Beecher? A. I don't know that I showed them to him. No, Sir.

Q. But you spoke to him about the paper Mr. Tilton had brought you? A. I spoke to him about Mr. West's charges.

Mr. Fullerton—Did you state to him the substance of the charges? A. Yes, Sir; I told him I had a full conversation with Mr. Beecher about it.

Mr. Evarts—They don't seem to have been shown to Mr. Beecher?

Mr. Fullerton—Did you state the substance of the charges to Mr. Beecher? A. Yes, Sir; I did, certainly; I have answered that.

Q. And what was said by him in reply? A. Why, he hoped that he would be able to find a way to get over that matter during the Summer.

Q. And what was proposed? A. I proposed that Mr. Tilton should—or I said that Mr. Tilton proposed to me that he should—write a letter saying that he declined, on the ground of non-membership.

Mr. Evarts—Now, I am not objecting to the witness correcting a statement that is made, the correction being that there never was any such conversation concerning Mr. West's charges as brought to him by Mr. Tilton.

Mr. Beach—That is not his correction.

Mr. Evarts—At that time.

Judge Neilson—At that time.

Mr. Evarts—Therefore I say what you have got here goes out.

Mr. Fullerton—No, No.

Mr. Evarts—Well, that is my statement—it goes out. If you admit that a conversation concerning the charges, which were concerning a paper which is presently before them, brought by Mr. Tilton, now that there was no such paper before them, that no such paper was brought by Mr. Tilton, and that instead of that there is a letter, not containing the charges, but a letter written by Mr.



West to Mr. Beecher, which Mr. Beecher brought to Mr. Moulton, now how are you going to put those two conversations together? You may take the witness up and examine him as to what occurred when Mr. Beecher brought that letter, and you may take him up and examine him as to what occurred in the Fall when the charges were brought—if Mr. Beecher was present, for it does not appear—but we cannot have a substitution of this testimony as it stands, as being in evidence that has been given by this witness in regard either to the letter of West to Beecher in the early Summer—because it does not profess to be—nor in regard to the charges of West in the Fall, because he has testified that he had no such conversation in the Fall.

Judge Neilson—I think this misapprehension had better be cleared up, Mr. Fullerton.

Mr. Fullerton—I will, to gratify the counsel upon the other side, and solely for that purpose.

Q. Now, state what occurred between you before the Summer vacation, in regard to anything with which Mr. West was connected. A. I received the letter of June the 25th, from Mr. West to Mr. Beecher, from Mr. Beecher, and we talked about those charges, and he wanted it to go over the Summer vacation—he wanted that matter to go over the Summer vacation.

Mr. Evarts—What was said we are entitled to.

Mr. Fullerton—Yes; what was said? A. Mr. Beecher said that he hoped the matter could go over the Summer vacation, and that then we could find a way to deal with it; I saw him in the Fall.

Judge Neilson—That was with reference to the letter? A. Yes, Sir, with reference to the letter of June 25.

Mr. Fullerton—The letter threatening the charges? A. Yes, Sir.

Mr. Evarts—Well, the letter.

Q. And did you approve of this—having it go over till Fall? A. Yes, Sir.

Q. What occurred then in the Fall with reference to the charges, when they came? A. In the Fall, the charges of Mr. West were made and the paper that I have seen here in court was brought to me by Mr. Tilton, and I saw Mr. Beecher and Mr. Tilton together, and it was decided what should be the reply; and Mr. Tilton said to Mr. Beecher, “I will claim my non-membership and thus will prevent my being cited before the church.” And he did write a letter and send it to Mr. Tallmadge, I think—if I am correct about that—and then Mr. Beecher said to him, in my presence, afterwards, “Theodore, God inspired you to write that letter.”

Q. Now, in this conversation that you have last spoken of between yourself, Mr. Beecher and Mr. Tilton, state whether the West charges were then and there present? A. I don't remember that they were.

Q. They were the subject, however, of the conversation? A. They were the subject of the conversation. I

think that Mr. Tilton had them in his possession there; I think so; I did not have them in my possession.

Q. Were they taken out and exhibited, do you remember? A. Mr. Tilton had them in his possession. I don't remember whether he exhibited them or not. My impression is that he did—I could not swear that he did. They were the subject of conversation, however.

Mr. Evarts—Those West charges, as they now stand on the evidence, are not entitled to be read. We ask that they be struck out. The foundation upon which he rested them as evidence has disappeared.

Judge Neilson—He said before that he could not say that Mr. Beecher saw them.

Mr. Evarts—Well, but he said that he had them there and that he stated them to him. I submit to your Honor that that exhibit must be struck out as not supported by any evidence.

Judge Neilson—I will look at the evidence as it stands. If it is not supported, it will be struck out.

Mr. Evarts—Your Honor understands our point.

Judge Neilson—Yes, Sir; I cannot recall it all now.

Mr. Evarts—No, we will not interrupt your Honor at present. We make the point, and if your Honor rules against us we shall except.

Judge Neilson—Yes, Sir.

Mr. Beach—My friend has read from the previous testimony of Mr. Moulton that at some time Mr. Moulton stated those West charges to Mr. Beecher.

Mr. Evarts—Yes, Sir, in the Summer, which happened to be some months before they were in existence.

Judge Neilson—But that same evidence now applies to a later interview.

Mr. Morris—He corrects it.

Mr. Evarts—He corrects it. When he is asked whether the charges were there or exhibited or produced, he does not know.

Mr. Fullerton—I will ask him about it.

Mr. Evarts—He cannot know any better now—better than he knew three months ago.

Mr. Fullerton—What was said in regard to the West charges at this interview between yourself, Mr. Beecher, and Mr. Tilton? Let us have it again. A. Mr. Tilton said he was going to plead his non-membership of the church, and therefore could not be cited down—to prevent his being cited before the church for trial.

Judge Neilson—He asked you what was said about the charges.

Mr. Beach—The question put to you is whether anything was said to you there, and if so, what, in regard to the nature or character of the West charges.

Mr. Evarts—Yes, that is the question put now; it has not been before.

Mr. Fullerton—Yes, it was before—the previous question.

Mr. Evarts—Well!

Mr. Beach—We propose to put it again.

Mr. Evarts—That could never happen—that conversation.

Mr. Fullerton—It did happen. It did not happen in the Summer.

Judge Neilson—One at a time.

The Witness—What is the question?

Mr. Fullerton—What was said in the conversation between yourself, Mr. Beecher, and Mr. Tilton in regard to the West charges against Mr. Beecher?

Mr. Beach—The nature of them.

Mr. Evarts—That is a leading question. This witness has made three answers that he don't remember. He has been asked three times what was said, and the answer was that Tilton would write a card declining.

Mr. Beach—Now, the witness should not be put in a false position. I think the witness has been misled by the form of the question that was put to him concerning what was said on the subject of the West charges. Now, I propose to have the question put to him, what if anything was there said in regard to the nature or character of the West charges?

Judge Neilson—In the Fall?

Mr. Beach—Yes, Sir.

Mr. Fullerton—State, Mr. Moulton, if you please? A. In regard to the nature or character of the West charges?

Q. Yes.

Judge Neilson—After they had been put in.

Mr. Evarts—After what?

Judge Neilson—After they had been put in.

Mr. Evarts—They were not put in. After they had been sent in to the church, your Honor.

Judge Neilson—That is what I mean, of course.

Mr. Fullerton—And after they had been served upon Mr. Beecher.

The Witness—There was nothing that I remember at this conversation except the fact that Mr. West had made his charges at the church, and Mr. Beecher was at the house and consulted with Mr. Tilton and myself in regard to what the answer should be to those charges.

By Judge Neilson—Was anything said as to what those charges of Mr. West were? A. We all seemed to know. There wasn't any discussion.

Judge Neilson—Well, that answers the question then.

Mr. Evarts—I think this ends the matter.

Mr. Beach—We will see.

Mr. Fullerton—You are very anxious to have it ended, but it will not be ended until it is done.

Mr. Evarts—Well, we will see.

Mr. Fullerton—Well, just wait and we will see. [To the witness.] On your former testimony—the former examination—I understood you to say that in that interview at your house between Mr. Beecher, Mr. Tilton and

yourself you stated the nature and character of the West charges?

Mr. Evarts—That I object to. There is no such thing in the evidence.

Mr. Fullerton—There is such a thing in the evidence.

Mr. Evarts—That is in the Summer, and the West charges had not been made then.

Mr. Fullerton—I don't care when it was that the conversation took place, and if the witness has made a mistake in saying that it took place in the Summer rather than in the Fall, I do not mean to be deprived of the benefit of that testimony.

Mr. Evarts—That I agree to. Now prove what took place in the Fall. Don't endeavor to call him to an exploded conversation in the Summer as evidence that he has given about what took place in the Fall.

Mr. Fullerton—Well, he didn't explode as frequently as you do, to no effect.

Judge Neilson—Put your question.

Mr. Fullerton—I say, if the conversation took place, it is immaterial when it took place. It was with reference to the charges, and of course—

Mr. Evarts—We will discuss this at some other time.

Mr. Fullerton—You are discussing it now.

Mr. Evarts—I am not.

Mr. Fullerton—You are trying to.

Judge Neilson—Be as quiet as you can, gentlemen. You interrupt the order.

Mr. Fullerton—Now I will read this over again, [reading from testimony of Jan. 15].

Q. You showed them to Mr. Beecher? A. A. I don't know that I showed them to him; no, Sir.

Q. But you spoke to him about the paper Mr. Tilton had brought you? A. I spoke to him about Mr. West's charges.

Q. Did you state to him the substance of the charges?

A. Yes, Sir; I told him I had a full conversation with Mr. Beecher about it.

That is what I referred to.

Mr. Evarts—That is before the charges were made.

Mr. Fullerton—[Reading]—

Mr. Evarts—They don't seem to have been shown to Mr. Beecher

Mr. Fullerton—Did you state the substance of the charge to Mr. Beecher? A. Yes, Sir; I did, certainly; I have answered that.

Mr. Evarts—Now—

Mr. Fullerton—One moment! I have a question to put, and then you may object if you please. [To the witness.] I call your attention to that part of the evidence in this case, and ask you now whether in the Fall after the charges were made you had this conversation which I have just read?

Mr. Evarts—That I object to. That is entirely a leading question. He asks this witness whether he had in the Fall a conversation that he testified that he had in



the Spring, and which he never did have in the Spring. Now we will get what the Fall conversation was, but not in that method.

Judge Neilson—The counsel should ask him what the Fall conversation was. Ask him what was said to Mr. Beecher in regard to the West charges, or, if anything, in regard to their contents and terms.

Mr. Fullerton—Now, will you state what conversation you had with Mr. Beecher in the presence of Mr. Tilton in the Fall, with reference to the West charges? A. Yes, Sir; Mr. Beecher was at the house with Mr. Tilton, and Mr. Tilton said to Mr. Beecher, "I shall plead non-membership with reference to these charges of Mr. West, so that I shall not be cited—so that I cannot be cited before the church"—or words to that effect; that is the substance of it; and Mr. Beecher thought that that was the proper course for him to pursue, and said that he would like to have him pursue that course; that was the substance of what Mr. Beecher said. And Mr. Tilton did write a letter to the church; and Mr. Beecher subsequently met Mr. Tilton and myself, and said, "Theodore, God inspired you to write that letter."

Q. Now, is that all that you remember? A. That is all that I remember.

Q. At any time when Mr. Beecher was present, was the nature of these charges—the character of these charges—discussed and mentioned? A. Mr. Beecher said to me, on one occasion—let me see; I think it was in the Fall—I told Mr. Beecher that Mr. Tilton had come to me and said to me that Mr. West seemed to him more friendly disposed toward him (Mr. Tilton) in the Fall than he had been; and that he had been to see Mr. Tilton with reference to coming down to the church and testifying—testifying on that subject; and I said to Mr. Beecher, "I do not like it; it seems to me that with reference to his charges against you, his undertaking, nominally, to defend you is but really to ruin you." Mr. Beecher said he thought so too. That is the only conversation that I remember in reference to the church.

Q. Did you ever hear of but one set of charges made by Mr. West? A. No; I never heard of but one set of charges. I remember the conversation that I have detailed to you specifically.

Mr. Evarts—Your Honor reserves your decision upon my motion to strike out?

Judge Nelson—Yes, Sir; I will look at the evidence. Now, will the audience be as quiet as possible?

#### MR. PORTER BEGINS THE CROSS-EXAMINATION.

Mr. Moulton cross-examined by John K. Porter:

Q. What is your age? A. Thirty-eight; I was thirty-eight years of age last July—the 11th.

Q. You mentioned that you were a member of the firm of Woodruff & Robinson? A. Yes, Sir.

Q. What is the business of that firm? A. The business of that firm, Sir, is—was, when I was a member of the concern, in both of its branches, a merchandise and storage business. I am a member of the concern of Woodruff & Robinson, now, in the merchandise business.

Q. You were a general partner? A. I was a general partner in the concern in the storage and merchandise business.

Q. When did you cease to be a general partner? A. I ceased to be a general partner, Sir, on the 1st day of January, if by general partner you mean in the merchandise and storage business; yes, Sir.

Q. What is your present partnership—one of definite or indefinite duration? A. Well, Sir, so far as I know, it is of indefinite duration; it is not a limited partnership.

Q. The time of its termination is not fixed? A. The time of its termination is not fixed; it has been talked about, Sir.

Q. And is still undetermined? A. And it is still undetermined.

Q. Mr. Tilton, I observe, takes frequent occasion to speak of you as the mutual friend of himself and Mr. Beecher. That was the relation you occupied, was n't it? A. I was a friend of Mr. Tilton's and a friend of Mr. Beecher's.

Q. At what era did your friendship to Mr. Beecher have its inception? A. Well, Sir, about Dec. 30, an intimate personal friendship, is—not an intimate personal friendship before Dec. 30, 1870, Sir.

Q. It had its termination at the time you refused to furnish him with copies of his own papers in your hands? A. No, Sir; I think not.

Q. How long after that did it continue? A. Can you give me the date, Sir, of the communication that he addressed to me? He addressed to me a communication, if I remember—perhaps I can state it to you from memory.

Mr. Beach—I think that question improperly assumes, Sir, that Mr. Moulton declined to furnish him with copies of papers. There is no such evidence, as yet.

Mr. Porter—You did decline to furnish him with copies of papers? A. I did not decline to furnish him with copies of papers.

Q. Did you decline to furnish him access to papers? A. By advice of counsel, Sir, I wrote a note to Mr. Beecher relative—in answer to a letter brought to me by Mr. Benjamin F. Tracy, at my office, Sir.

Q. You do not understand that you ever did deny to Mr. Beecher access to his papers in your hands? A. To his papers in my hands? No, Sir; I do not understand that I ever denied him access to his papers in my hands.

Q. You are not sure

to them? A. I am aware that he desired to have me furnish, if I remember correctly, Sir, the phraseology of his note; I am aware that he desired to have me furnish him—the letter will state, if you will allow me to look at it, Sir. Perhaps you know it yourself.

Mr. Porter—Well, you have the letter.

Mr. Beach—It is printed.

Mr. Evarts—Well, it is the letter to Mr. Moulton that we want.

The Witness—There was a letter brought by Mr. Tracy to me.

Mr. Evarts—You have got it, have 'nt you? A. I have not—I do not—it may be among the papers here, Sir; I think it was dated July 24, if I remember correctly.

Mr. Evarts—If we want that letter you will have to find it, I suppose. We want the original.

Mr. Beach—He can refresh his recollection by looking at the copy, if he wants. [Book handed to witness.]

Mr. Porter—Have you the original letter addressed to you on the 24th of July, '74? A. I really do not know, Sir, whether I have or not; if I have I will produce it; I do not know whether I have or not.

Q. You were subpoenaed to produce that among other papers, were you not? A. Yes, Sir; I have a subpoena to produce papers; I shall produce them—all, Sir, that I have; I judge that I must have it; it is marked here "D."

Q. Paper marked "L," is 'nt it? A. "L;" you are correct, Sir, marked "L." Now, the reply to that letter, Sir, was made by my counsel, as I stated to you; and if you will allow me to look at that I will see whether—[Book handed back to witness.]

Q. Just identify this letter first; do you identify that letter? A. Yes, Sir; I think this is the letter.

Mr. Porter—I will read it as printed now, and will subsequently introduce the other when it is produced.

Judge Neilson—Yes, Sir.

Mr. Porter—[Reading.]—

JULY 24, 1874.

MY DEAR MR. MOULTON: I am making out a statement and I need the letters and papers in your hands. Will you send me by Tracy all the originals of my papers? Let them be numbered and an inventory taken, and I will return them to you as soon as I can see and compare, get dates, make extracts or copies, as the case may be.

Will you also send me Bowen's "Heads of Difficulty," and all letters of my sister, if any are with you?

I heard you were sick—are you about again? God grant you to see peaceful times. Yours gratefully,

F. D. MOULTON.

H. W. BEECHER.

Q. When that letter was presented what reply did you make to Mr. Tracy? A. I think I told him I was going out of town that evening.

Q. Was that all? A. Well, it is about all that I distinctly remember.

Q. And then

immediately follows that

letter you may be able to refresh your recollection. A. I said to Mr. Tracy that he had better take—

Q. No, no, not aloud; you can refresh your recollection? A. I think I said something of that sort to him.

Q. Something of what sort? A. That I could not honorably give Mr. Beecher documents for conflict when I had not given them to Mr. Tilton.

Q. Did Mr. Tracy request you to give copies? A. He wrote a letter to me, Sir, asking me to give copies, and put the letter in his pocket—would not give that to me; he put it in his pocket and took it away with him, Sir; I recollect that.

Q. Be kind enough to refresh your recollection by looking again at the paper you have in your hand? A. "I suggested that perhaps—"

Q. No, you need not read, except for your own information? A. He said something about copies, Sir.

Q. He did? A. Yes, Sir; and he wrote a letter.

Q. One moment. A. Pardon me, Sir.

Q. Did he ask for copies? A. He said to me that Mr. Cunningham, a friend of both parties, might be trusted to make copies, and I said I didn't think that I could furnish copies any more than I could furnish the originals; that I was going away, and I did go away, Sir.

Q. Before going away, suppose we finish the conversation—will you look once more? A. Yes, Sir.

Q. Did you state to Mr. Tracy that it would seem to you the same breach of honorable obligation as to send the originals? A. I think I said something of that sort to him, Sir; I may not have used that phraseology exactly.

Q. You say Gen. Tracy wrote a letter at that time and on that subject? A. Yes.

Q. Did you refuse to receive it? A. I did not refuse to receive it.

Q. He did not offer it? A. I don't remember that he offered it to me, Sir; he put it in his pocket, and I asked him to take the other letter back with it.

Q. Did he read it to you? A. I don't remember that he read it to me.

Q. Did he write it in your presence? A. He wrote it sitting at the desk, Sir.

Q. In your presence? A. I was present in the office when he wrote it; I didn't look over his shoulder to see what he was writing.

Q. He wrote it to you? A. I don't know whether he did or not; I could not swear to that; he wrote a letter and put it in his pocket.

Q. You did not at the time understand that it was a letter to you? A. I had no reason for understanding anything about it.

Q. Why, a few minutes since, did you say he did write you a letter, but didn't deliver it? A. He wrote a letter, Sir; if I said he wrote me a letter I could not know that he wrote me the letter, because I didn't receive a letter from him,



Q. You didn't understand it to be a letter to you? A. Mr. Tracy said, "I will write a letter asking for copies;" and he put that letter in his pocket, and I never saw that letter, nor do I remember that that letter was read to me.

Q. Was the letter from Mr. Beecher a sealed letter? A. I don't remember, Sir, whether it was or not.

Q. When you read the letter of Mr. Beecher, didn't Gen. Tracy say to you that if you would not let him have the originals, copies would serve as well? A. I think Mr. Tracy said copies might serve as well.

Q. You didn't consent to show the original, nor to furnish copies, nor to permit them to be made? A. I didn't deny the original, nor did I deny copies.

Q. And gave neither? A. I gave neither because I was going out of town, Sir.

Q. And consented to give neither? A. And consented at that time to give neither.

Q. And affirmed that you could not honorably give either? A. That I didn't think I could.

Q. When did you next hear from Mr. Beecher on that subject? A. On what subject, Sir. On the subject of producing the document?

Q. Of access to those letters? A. I don't remember the date, Sir, I don't remember.

Q. If you will just look, you will see that there was a letter dated 28th of July. When did you receive that? A. I think, Sir, that I didn't receive that letter until the 4th of August, until my return. I went away.

Q. Were your letters forwarded during your absence? A. My letters were forwarded, Sir, to Narragansett; a messenger, I believe, went with the letter to Narragansett. Some letters came to me at Boston, but this letter Sir, I didn't receive.

Q. Until your return? A. I think not, Sir, to the best of my recollection.

Q. You use the phrase "you think not." Do you mean to affirm, as matter of knowledge, that you did not? A. I did not.

Q. You left on what day? A. I think on the 24th; it was the date of this letter, I believe, that I left.

Q. You returned on what day? A. I think Aug. 4, Sir.

Q. On that day did you receive this letter? A. Yes, Sir.

Mr. Porter—I will read that. I don't know whether the last letter was marked.

Mr. Pearsall—No, it was not marked.

Mr. Porter—The better way will be to mark ours "D 1," "D 2," &c.

Judge Neilson—Mr. Pearsall, will you attend to that?

Mr. Morris—I would prefer that Mr. Shearman would do that.

Mr. Shearman—It is marked "D 1."

Mr. Porter—I read now the letter of July 28:

BROOKLYN, July 28, 1874.

MY DEAR FRIEND: The Committee of Investigation are waiting mainly for you before closing their labors. I too, earnestly wish that you would come and clear your mind and memory of everything that can bear on my case. I pray you also to bring all letters and papers relating to it, which will throw any light upon it, and bring to a result this protracted case. I trust that Mrs. Moulton has been reinvigorated, and that her need of your care will not be so great as to detain you.

Mr. Porter—Did you take offense at that letter? A. Did I take offense at it? No, I think not, Sir; I don't remember of the date.

Q. Did you regard that as an indication of unfriendliness to you? A. I don't think I did, Sir.

Q. Will you look at your statement for one moment, and refresh your recollection on that subject? A. Yes, Sir; what part of it, Sir?

Q. Immediately below the last letter? A. The letter of Mr. Beecher of August the 4th, heretofore published?

Q. Just refer to it, and then answer me? A. August 4, yes, Sir.

Q. How is it? A. I didn't consider the other a letter of unfriendliness; no, Sir.

Q. Nor an indication from Henry Ward Beecher of unfriendliness? A. No, Sir; the letter of June 28 you are referring to now; July 28 you are asking.

Q. July 28? A. Yes, Sir.

Q. The letter of Aug. 4 you did, didn't you? A. Where is the letter of August the 4th?

Mr. Beach—I have not heard of any of August the 4th.

Mr. Evarts—He received this letter of the 28th of July on the 4th of August.

Mr. Beach—Well, that don't make the letter of the 4th of August.

The Witness—I think I can find it right away.

Mr. Pearsall—You will find it, Mr. Moulton, at page, 41.

Mr. Porter—The letter of August 4 was one in reply to yours, I think. On the 4th of August, upon receiving the letter of July 28, you wrote to Mr. Beecher? A. Note of July 24.

Q. July 24; 28th I think it is? A. You said 28th; 24th you mean?

Q. On the 4th of August you wrote a letter to him? A. On the 4th of August, yes, Sir.

Mr. Porter—I will read that letter, your Honor, and then will follow it up with the letter of Mr. Beecher.

NO. 49 REMSEN-ST., BROOKLYN, Aug. 4, 1874.

MY DEAR MR. BEECHER: I received your note of July 24, informing me that you are making a statement and need the letters and papers in my hands, and asking me to send them to you for the purpose of having extracts or copies made from them, as the case may be, that you may use them in your controversy with Mr. Tilton. I should be very glad to do anything that I may do, consistent with my sense of what is due to justice and right, to aid you; but if you will reflect that I hold all the important papers intrusted to me at the desire and request and in the confidence of both parties to this unhappy affair, you will see that I cannot in honor give

them, or any of them, to either party to add him as against the other. I have not given or shown to Mr. Tilton any documents or papers relating to your affairs since the renewal of your controversy which had been once adjusted. I need not tell you how deeply I regret your position as foes each to the other. After my long and as you, I have no doubt, fully believe, honest and faithful, effort to have you otherwise. I will sacredly hold all the papers and information I have until both parties shall request me to make them public, or to deliver them into the hands of either or both, or to lay them before the Committee, or I am compelled in a court of justice to produce them, if I can be so compelled. My regret that I am compelled to this course is softened by my belief that you will not be substantially injured by it in this regard, for all the facts are, of course, known to you, and I am bound to believe and assume that in the statement you are preparing you will only set forth the exact facts; and, if so, the documents, when produced, will only confirm and cannot contradict what you may state, so that you will suffer no loss. If, on the contrary—which I cannot presume—you desire the possession of the documents in order that you may prove your statement in a manner not to be contravened by the facts set forth in them to the disadvantage of Mr. Tilton, I should be then aiding you in doing that which I cannot believe the strictest and firmest friendship for you calls upon me to do. With grateful recollections of your kind confidence and trust in me.

I am, very truly, yours,

F. D. MOULTON.

Rev. Henry Ward Beecher, Brooklyn, N. Y.

Mr. Porter—At that time you were a mutual friend of these parties, were you? A. Up to August 4.

Q. At that time were you the mutual friend of these parties? A. I had been as friendly to one as the other, Sir.

Q. Had what? A. Had been as friendly to one as the other.

Q. My question was not as to the past, but as to that present. A. As to what?

Q. My question was, whether, when you wrote that letter, you were the mutual friend of these parties? A. I was a friend of Mr. Beecher's and a friend of Mr. Tilton's at that time that I wrote the letter, Sir.

#### BEECHER WRONGS MOULTON.

Q. At that time you cherished for him the strictest and firmest friendship, did you? A. I did.

Q. Down to that time had he ever wronged you? A. I don't think that he had, except in asking me to lie for him. [Laughter.]

Q. Do you think that was a wrong? A. Now, I do; yes, Sir.

Q. Did you then? A. I did not; I thought I was saving a man who was repentant.

Q. Did you lie for him? A. I did.

Mr. Porter—We have your word. [Laughter.]

Judge Neilson—One moment; the counsel ought not to comment upon what the witness says.

Mr. Porter—Not now, perhaps. [To the witness.] Did

you mean to intimate to Mr. Beecher that Theodore Tilton had not copies of these papers of which you denied copies to him? A. I meant to say, Sir, that I had never given him a copy for the controversy.

Q. Will you now oblige me by answering my question? A. Pardon me; I thought I had answered it.

Q. Did you mean to intimate to him that Theodore Tilton had not copies of the papers of which you refused copies to him? A. Did I mean to intimate; let me understand; I wish to answer the question; if you will ask the question again I will try to.

Q. When you wrote these words did you mean to be understood by him that, as you had furnished no copies to Mr. Tilton, you would furnish none to him? A. I had furnished none to Mr. Tilton, and would furnish none to him; that is what I meant to say.

Q. And you meant so to be understood? A. I meant so to be understood.

Q. Did you furnish—well, you answered my question? A. I did, Sir.

Q. Did you hand to Theodore Tilton the retraction which you procured from Mr. Beecher the evening you visited him with a pistol? A. Did I hand it to him?

Q. Yes. A. I read it to him, and may have handed it to him; I do not remember whether I handed it to him or not; I think I did, perhaps.

Q. You don't know, then, but what you did hand it? A. I don't know but what I did.

Q. You think you did? A. I may have handed it to him to read.

Q. To copy? A. No, Sir.

Q. Did he copy it? A. I don't remember that he did.

Q. And did you dictate to him while he copied? A. No, Sir.

Q. Did Mr. Tilton afterwards send you that paper? A. Did he afterwards send me the letter of recantation?

Q. Yes. A. My impression was that I kept it, Sir.

Q. Do you mean to deny his statement that he afterwards sent it to you?

Mr. Fullerton—One moment; I object to that.

Judge Neilson—It is objectionable, as assuming—

Mr. Fullerton—There is no statement of that kind.

Judge Neilson—Yes.

Mr. Porter—Have you read Mr. Tilton's successive statements? A. Not all of them, Sir; no; I don't remember having read the statement that you speak of.

Q. How? A. I don't remember having read the statement that you speak of, and I would not be guided by it if I had.

Q. Do you mean, then, to swear that Theodore Tilton never had that in his possession? A. No, Sir; I do not mean to swear to that.

Q. Do you mean to swear that he never had it before this controversy began? A. I don't mean to swear to that; no, Sir.

Q. You don't know but he did? A. I don't know but



what I handed it to him that night; it would have been quite natural, Sir, if I had.

Q. Do you know whether he had copies of other papers, copies of which you had denied to Mr. Beecher?  
A. Do I know whether he had copies of other papers—

Q. Yes; of which you denied copies to Mr. Beecher?  
A. He told me that he had made a memorandum of the letter of contrition, part of which he quoted in the Bacon letter.

Q. I was not inquiring what he told you? A. Ah! I beg pardon.

Q. I was inquiring of your knowledge of the fact that he had copies. A. I don't know that he had copies, Sir.

Q. You never knew? A. No, Sir; I had not seen any copies in his possession.

Q. Do you remember his sending that with other papers, saying that they would be more secure in your safe than in his? A. Remember sending what, Sir?

Q. A retraction by Mrs. Tilton? A. I do not remember that, Sir.

Q. You do not? A. I do not remember that.

Q. Did you ever read Mr. Tilton's examination? A. Not all through; no, Sir.

Q. Did you ever dictate to him while he made copies of papers connected with this controversy? A. I do not remember that I ever did.

Q. Do you remember that you did not? A. I should swear that I did not, Sir, if I swore at all.

Q. Well, that is what I ask you, whether you do so swear? A. I should swear that I did not.

Q. You do? A. Yes, Sir; for I do not remember that I ever did.

#### MOULTON UNINTERESTED IN TILTON'S LATER STATEMENTS.

Q. Did you read Tilton's first statement?  
A. Not all of it.

Q. Did you hear it read? A. No, Sir; he would not read it to me.

Q. Did you hear his second statement? A. Did I hear his second statement?—no, Sir.

Q. Nor did you read it? A. No, Sir; he would not—he would not let me read it.

Q. Well, the better way is to find yourself the questions. A. Pardon me, I forget the—

Q. You do not now know what it contained? A. I do not now know what it contained; I could not repeat it, Sir; I read it after it was published—a portion of it.

Q. Why did you stop with a portion of it? A. I don't know, Sir; I was not very much interested in it.

Q. But you remember distinctly the fact that you did not read it through? A. I remember that I did not read it through.

Q. And that you never have read it through? A. No, Sir; not all of it.

Q. You remember distinctly the fact that you have never read his examination through? A. I remember that, Sir.

Q. You remember distinctly that you have never read his last statement through? A. I remember that.

Q. Nor heard it read? A. Nor heard it read.

Q. We will return to Mr. Beecher's letter; will you turn to page 142? A. Yes, Sir.

Q. In reply to your letter of the 4th of August you received this, did you? A. In reply to what, Sir?

Q. To your letter of the 4th of August. A. Received which one, Sir? where is it?

Q. The one which you find on page 142. A. Oh! I see; yes, Sir; yes, Sir.

Mr. Beach—I do not see upon what principle these letters from Mr. Beecher are receivable.

Mr. Evarts—To show the relations of the witness with the party against whom he has testified.

Mr. Beach—Yes, Sir; but I object to these communications from Mr. Beecher to Mr. Moulton. It is intimated by counsel that they are offered in evidence for the purpose of showing the relations or the feelings between Mr. Beecher and the witness. I understood it to be abundantly settled by the authorities that for that object it is not competent to show the particulars of any one, or of any transaction as between the witness and the party; but only to ask as to the state of feeling; and if your Honor has any doubt in regard to that proposition, I shall ask you to look at the authorities upon the subject. Now, here is a series of letters proposed to be introduced, written by Mr. Beecher to Mr. Moulton. I cannot see, Sir, upon what principle they are admissible. They contain declarations upon the part of Mr. Beecher which may, perhaps, affect the merits of this controversy. They may contain allegations of fact which Mr. Moulton, for aught I know, may have admitted or failed to deny. But how those assertions upon the part of Mr. Beecher whether written or oral, can be produced upon this issue I am at a loss to perceive. It is not pretended that Mr. Tilton was present. It is not pretended that they were shown or stated to Mr. Tilton. No possible connection upon the part of Mr. Tilton, we think, is proposed to be shown; certainly none has been shown, and until that connection is proven, I submit to your Honor that they are not admissible, and I object to them.

Mr. Evarts—Certainly, these letters have nothing to do with Mr. Tilton. Mr. Moulton has shown himself by his direct examination as the depositary in the confidence of friendship of certain papers as well as a good many oral communications, if we are to trust to his remembrance of such conversations that were confidential. Now, a controversy arises in which these papers confided to him are pertinent, and made in behalf of Mr. Beecher, who had confided them

and it was necessary and proper that Mr. Beecher should have the papers in reference to the inquiry that concerned the subject in respect to which those papers came into existence, and that go to show the attitude and conduct of this witness from the moment that the confidence in which the papers had been reposed required that for the purpose of the man who had reposed that confidence in him, he should have access to them, he took the attitude of denying and of excluding. And as we could have shown the conversation between them on the subject to mark the attitude, and mark the sentiments, and mark the conduct from that time forth of this witness in this controversy, so we can show the correspondence between them and the letters from Mr. Beecher to Mr. Moulton and from Mr. Moulton to Mr. Beecher on the subject matter of the attitude, or a statement of the attitude, as a conversation would be. And it is our purpose to show by this correspondence that from that time forward this witness has been hostile, active in opposition to Mr. Beecher; and this great act of refusal and exclusion, the applications made by Mr. Beecher, and the manner in which they were met by Mr. Moulton, is the initial step of that exploration and exposure of this witness's attitude.

Judge Neilson—Well, we have received the correspondence down to the point of refusal—that appears—on application for the papers or for copies, obtaining neither—that appears. Now, unless the remaining correspondence is for some other purpose than to show hostile feeling, I think it is not admissible. That fact can be shown by a general question or proved by anybody else.

Mr. Porter—But the correspondence on that day is itself conclusive evidence of hostility on the part of Mr. Moulton. Besides, in this letter from Mr. Beecher, he replies to the allegations made by Mr. Moulton in the letter addressed to him, renews his application, limits it, makes it more specific, and that reply by Mr. Moulton I propose to read as a part of the *res gestæ* in reference to the very papers in controversy.

Judge Neilson—Those two remaining letters going to the question of application and refusal?

Mr. Porter—Yes, Sir.

#### ATTEMPT TO PROVE MOULTON HOSTILE TO BEECHER.

Mr. Beach—We do not deny the proposition that it is entirely competent to show hostility, if it can be shown, on the part of Mr. Moulton against Mr. Beecher—ill feeling, malice—nor do we deny the right, in the language of the first counsel who addressed your Honor, to show that there was an active and persevering hostility on the part of Mr. Moulton toward Mr. Beecher. The question is one that has to be shown. The counsel says, and he assumes that is an

established proposition, which I deny, that he can show it by proving conversations, the details of quarrels, the details of litigations, if you please, or any other declarations upon any subject as between the two parties. I assert, Sir, that the settled doctrine of the law is that for the purpose of proving that condition of feeling between assumed parties, you cannot give the details of transactions between them from which that hostility may be inferred; that you can only ask in regard to the actual state of feeling or to acts upon the part of the witness which go to indicate a hostile sentiment. Now, this letter which is proposed to be introduced—Aug. 4, of Mr. Beecher's—if your Honor will look at it, you will see that there is an expression in the last part of it of reproach, of indignation, if you please, for refusing these originals or these copies, as the case may be. Upon what principle is that received? The fact of refusal is already established, and, so far as that is proper or improper, so far as it is indicative of any ill-sentiment on the part of Mr. Moulton towards Mr. Beecher, why your Honor will see it, and the jury may consider it, but expressions of resentment or anger, condemnation on the part of Mr. Beecher, are not to be received as evidence of that condition of feeling as between the parties. It is enough that the parties admit or deny that that feeling exists. I wish your Honor would look at this proposed letter.

Judge Neilson—It is not necessary. I think the correspondence already in clearly amounts to an application for papers or copies, and a refusal; that covers that part of it.

Mr. Evarts—Now, if you leave it there it will stand upon this letter; but that was not the end of the application. Mr. Beecher renews and enforces his applications, and is met with persistent resistance.

Judge Neilson—That is not necessary to our purpose. It is sufficient that an application was made.

Mr. Evarts—Have we not a right, if your Honor please, to show what applications we made, and how they were refused?

Judge Neilson—Here is the application made.

Mr. Evarts—We can show one application made in a certain matter. If that were the end of the matter, very well; but we persist in our application, and then we are met in the manner that we are met. It is not a repetition of the response, as before. Our application is, in the shape presented to him, an earnest of our necessity and of justice, and replied to by him in the manner that it is replied to, and we offer that evidence as in itself the most direct and most trustworthy evidence of the hostility of this witness at that stage of the matter, not by any general state of feeling, but by an espoused side, and maintenance of the opposing litigation from that time forward, and that is the evidence of it.



Judge Neilson—I think we have sufficient of the correspondence. I rule out this letter.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Mr. Porter—I offer first those letters from Mr. Moulton to Mr. Beecher on the 4th of August, 1874, renewing and limiting his application for that paper, and stating the specific grounds on which he claims them. Your Honor excludes it, and we except.

Judge Neilson—Yes, Sir.

Mr. Porter—I offer then the letter from Mr. Moulton in reply, on the following day, in which he declines the proposition, and states the specific grounds on which he declines. We except to your Honor's exclusion of the letters.

Mr. Porter—It was not until you received the answer on the 4th of August to your letter of that day that your friendly relations with Mr. Beecher terminated? A. Not until that time.

Q. And that letter was the commencement of their termination? A. One of the false statements in the letter was.

Judge Neilson, to the witness—Answer yes.

Mr. Porter—I now renew the offer.

Judge Neilson—I strike out the expression "false statements."

Mr. Porter—I do not object to it. I renew the offer now, that I have proved that this letter was the occasion of the termination of their relations. I now offer to read it, that your Honor may see, and that the jury may know.

Judge Neilson—It is sufficient that they did terminate friendly relations. We have sufficient evidence.

Mr. Evarts—How is that proved, if your Honor excludes that letter?

Mr. Fullerton—By the answer of the witness.

Mr. Evarts—How are the form and manner and degree of the hostility proved except by the expressions.

Judge Neilson—He has stated the fact that those relations terminated at that time.

Mr. Evarts—We are not obliged to take his answer, if your Honor please.

Q. After that did you ever enter the house of Henry Ward Beecher? A. After August 4!

Q. Yes, Sir. A. No, Sir.

Q. Did he ever enter yours? A. I don't think he has, Sir.

Q. Before the 30th of December, 1870, did you ever enter his house? A. I may have gone there with my partner on a New Year's Day to make a call.

Q. Do you remember that you ever did before that date? A. I don't distinctly remember that I did.

Q. Did he ever enter your house to your knowledge before that date? A. I don't think he did.

Q. As I understand you, the inception of your friendship for Mr. Beecher was on that stormy night when, as

you claim, you learned that he had debauched the wife of your most intimate friend? A. It was not previous to that.

Q. And its termination was at the time you refused to allow him access to the papers upon which you relied for the vindication of that charge? A. Yes, Sir.

Q. What was the inception of your friendship for Theodore Tilton? A. My early acquaintance with him, Sir.

Q. In what year did you become acquainted with him? A. In 1850, I think—1849 or 1850.

Q. Where? A. At the New-York Free Academy.

Q. What academy? A. The New-York Free Academy.

Q. Were you with him at any other institution? A. No, Sir.

Q. How long were you together there? A. Till 1854, I think.

Q. Were you classmates? A. Part of the time.

Q. Were you then on terms of the closest intimacy? A. I was intimate with him, friendly with him; he was my friend.

Q. Did he do you favors there? A. I do n't remember that he did me favors.

Q. Nor any favor? A. I do n't know that he did, any more than one student—

Q. You received a prize at that institution on one occasion, did you not? A. I think so; Yes, Sir, I believe I did.

Q. Was he a competitor? A. I don't remember that he was.

Q. Do you remember that he withdrew from competition in order to enable you to get that prize? A. No, Sir, I don't.

Q. Nor that he did it at your request? A. No, Sir.

Q. Who left the Academy first, you or he? A. I think he did.

Q. Where did he go? A. I believe he went into business as a reporter, or went into some newspaper office.

Q. When did he leave the Academy? A. In 1854.

Q. What did you do after that? A. On August 17, 1854, I went with Woodruff & Robinson, as a boy in their office.

Q. You remained with them in that capacity how long? A. I think six or seven years.

Q. During that time did you from time to time see Theodore Tilton? A. From 1854 to 1861 do you mean?

Q. Yes, Sir. A. Yes, Sir.

Q. Your kindly relations continued? A. Yes, Sir; they were kindly.

Q. Were you then living, in New-York or in Brooklyn? A. I lived in New-York, Sir.

Q. When did you remove to Brooklyn? A. I think it was in 1862 or 1863, somewhere along there—1863.

Q. At that time had you become a clerk in the office with the firm? A. Yes, Sir.

Q. When did you first acquire an interest in the firm?

A. I think it was in 1861.

Q. When did you and Mr. Tilton come to meet more frequently? A. We came to meet more frequently after I came to Brooklyn.

Q. When was it? A. In 1863, I think.

Q. Was he residing here at that time? A. He was residing in Brooklyn, I believe.

Q. From that time were you quite intimate with him? A. Well, Sir, I didn't have time to be very intimate with anybody; I was friendly. I didn't visit his house very frequently at that time; I didn't visit anywhere.

Q. When did you begin to visit at his house? A. I think in 1863 or 1867, somewhere along there.

Q. When did he begin to visit yours? A. About that time when I moved into Clinton-st., when we became nearer neighbors.

Q. Were your families intimate? A. They were never very intimate; no, Sir.

Q. Your intimacy with Mr. Tilton was much greater than with Mrs. Tilton, of course? A. Yes, Sir.

Q. When did you first become his banker? A. He deposited money with Woodruff & Robinson in the beginning of 1871, if I recollect correctly.

Q. Were they engaged in business as bankers? A. No, Sir, he deposited money with Woodruff & Robinson—he wanted me to take it for him.

Q. In 1871? A. Yes, Sir.

Q. Was that the first occasion in which your firm had been his banker? A. I think he never had any money with us before that, Sir.

Q. Had you ever lent him money before? A. No, Sir.

Q. Never? A. Never that I know of.

Q. Had you ever engaged in any enterprise with him before that? A. Not that I now remember, Sir.

Q. Can you say that you had not? A. I think I could say so truthfully, Sir.

Q. You had before that been in the habit of visiting him frequently? A. I had been at his house quite frequently, yes, Sir.

Q. And he at yours quite frequently? A. He had been there, yes, Sir.

Q. Did he often sleep at your house? A. I don't think he did ever sleep there.

Q. Never? A. I don't remember that he ever stayed all night.

Q. Did he often take meals at your house? A. He did take meals there quite often.

Q. Breakfast? A. Sometimes.

Q. Frequently? A. I think not.

Q. Dinner? A. Dinner.

Q. Frequently? A. Yes, Sir.

Q. Did he ever take his meals at your house day after day. A. I don't remember that he was in the habit of taking them there, day after day; no, Sir.

Q. I did not inquire if it was his habit; I asked you if he ever did? A. He used to come for several days in succession; yes, Sir.

Q. Was it the subject of complaint by Mrs. Tilton? A. I never heard of it, Sir.

Q. Were you ever at his house over night? A. Never that I remember, Sir.

Q. Had you any pecuniary transaction with him prior to 1874. A. No, Sir.

Q. Did you afterward. A. Yes, Sir; after the date of this \$4,000 you mean.

Q. When first did you have any pecuniary transactions with him? A. The first was the \$4,000—the deposit of the \$4,000 with the concern.

Q. What time was that in 1871? A. It was in the beginning of 1871; in January, I think.

Q. That was at his instance? A. Yes, Sir.

Q. Not at your suggestion? A. I don't think it was.

Q. Was it for any special purpose? A. Not that I know of.

Q. Did it have any connection with any newspaper transaction. A. Not at the time it was made—not at the time it was deposited.

Q. Did he draw checks against it? A. He drew it out from time to time, by drafts I think; I don't remember now how he drew it out, whether he went to get the currency for it or drafts; I don't know now; I don't remember now.

Q. Did you bring with you your account of your transactions with him? A. I have told our bookkeeper to have it taken off.

Q. It is not yet ready? A. No, Sir.

Q. Will you be kind enough to remember to have it ready? A. Yes, Sir, certainly. Will you (Mr. Porter) be kind enough to tell me what was the last document you asked me to produce? I will make a memorandum of them now as I go along.

Mr. Porter—I don't now recall it.

The Witness—It was the letter of July 24, I think.

Mr. Pearsall—Yes, Sir.

The Witness—Yes, Sir, and now the account of Mr. Tilton. Make a memorandum for me, Mr. Pearsall, will you?

Mr. Pearsall—Yes, Sir.

Judge Neilson, to counsel—What do you propose further, gentlemen?

Mr. Morris—The hour of adjournment has arrived.

Judge Neilson—Judge Porter, do you suspend your cross-examination?

Mr. Porter—Yes, Sir.

The Court thereupon adjourned until 11 o'clock on Tuesday.



## SEVENTH DAY'S PROCEEDINGS.

## AN INDIRECT OPENING OF THE DEFENSE.

TESTIMONY RELATING TO MR. MOULTON'S ACQUAINTANCE WITH MRS. WOODHULL, HIS ACCOUNTS WITH MR. BEECHER, HIS STOCK IN THE GOLDEN AGE AND OTHER MATTERS—IMPORTANT TESTIMONY EXCLUDED.

The cross-examination of Francis D. Moulton was continued on Tuesday, Jan. 19, by ex-Judge Porter, and seemed in some respects as an indirect opening of the defense. It related mainly to his acquaintance with Mrs. Woodhull, his intimate relations with Mr. Tilton, his accounts with Mr. Beecher and his financial interest in *The Golden Age*. Evidence concerning the indictment against him and the settlement of Miss Proctor's suit was ruled out.

## SIDE-LIGHTS ON THE EVIDENCE.

If the object of a cross-examination is to drive a witness into a corner and worry him until his words are turned against himself, the defense were singularly unsuccessful on Jan. 19, and ex-Judge Porter had his time for his pains. It, however, the object of a cross-examination is to let in side lights and to change the aspects of the salient points of the controversy, the defense were singularly successful, and ex-Judge Porter had a new atmosphere for his pains. Zealous admirers of Mr. Beecher, who expected to see the witness flinch and his testimony shrivel and crack under a hot fire of cross-examination, went to lunch and subsequently to supper with impaired appetite and temper. Mr. Moulton smiled when he took his seat, smiled all the way through, and when he rose to get his overcoat, smiled again as he whispered to a friend that it was easy to tell the truth. He was not disconcerted at any stage of the proceedings, but played with his handkerchief with an expression of amusement on his face, was entirely at his ease, and, as many of Mr. Tilton's friends claimed, was "the best witness ever seen in court." But it was a cross-examination in name rather than in kind. Ex-Judge Porter made no effort to confuse him; questions were put to him in a pleasant voice and in a courteous manner; and from beginning to end there was an utter absence of the vulgar arts and cunning devices by which a lawyer aggravates the torture of the victim in the chair and casts suspicion upon his words and acts. The scope of the defense was much more comprehensive.

The jury and the auditors since the opening of

this case have been breathing the atmosphere of the plaintiff. Ex-Judge Morris, in his opening address, presented the whole case in sharp outlines, and placed Mr. Beecher's correspondence and the other documentary evidence in the case under the lens of his interpretation. All the negotiations which Mr. Moulton conducted, and all the devices by which silence was maintained, and by which the main facts of the controversy were kept beneath the surface, were analyzed in detail, and the inference was drawn again and again that every effort at compromise and concealment implied the defendant's guilt. Mr. Moulton in his testimony has strengthened these impressions. Mr. Beecher's letters have been identified and read to the jury, and the witness has himself interpreted them as confessions of guilt. The negotiations in which he took so active a part have been rehearsed by him, and Mr. Morris's construction has again been placed upon them. The jury-box has become saturated with the theories and inferences of the plaintiff's side. Obviously the defense wanted to turn on the side lights and change the color and relations of the evidence.

Mr. Moulton, in effect, was used as a witness to prepare the way for the presentation of the defendant's case, and the cross-examination was conducted, therefore, after the manner of a direct examination. This will readily be illustrated.

Mr. Moulton hitherto in this case has appeared in the light of Mr. Beecher's friend, devoting himself with untiring zeal to his service from Dec. 30, 1870, to midsummer, 1874. He has been introduced to the jury as Mr. Beecher's confidential friend, who remained true to him until the charges of blackmail were made. The defense, on the other hand, introduced Mr. Moulton as the schoolmate and life-long friend of Mr. Tilton, going fishing with him in the Summer, taking him to Narragansett Pier during several seasons, visiting him frequently, dining with him, acting as his banker, helping him when *The Golden Age* was started, lending him money, conducting the negotiations for the award of \$7,000 to him for the abrogation of the Bowen contracts, sympathizing with his views in regard to woman suffrage, and joining him in his attentions to Mrs. Woodhull.

Again, Mr. Tilton has appeared as a man who could have crushed Mr. Beecher but who was unwilling to expose him. The letter of Mr. Tilton to a friend in the West was called out by the defense to show that he had denounced Mr. Bowen as draw

ing an assassinating dagger upon Mr. Beecher, and that he had regarded the Woodhull publication as a wrong and an insult to his wife. The reply which Mr. Tilton wrote to Mr. Bowen's notice of dismissal, it was shown, was put in type in the office of *The Golden Age*, and sent to Mr. Bowen and Mr. Beecher.

Again, the prosecution have introduced Mr. Moulton as the advocate of the policy of silence at every stage of the controversy. The defense questioned him closely in regard to his intimacy with Mrs. Woodhull, in order that the jury might infer that the first public accuser of Mr. Beecher had derived hints from him. He admitted that he had talked with her upon the subject of the scandal, but denied that he had described the pistol scene to her as she subsequently represented. He described his early visits at Mrs. Woodhull's house, and acknowledged that he had met her at Mr. Tilton's and at his own house. He did not know how Mrs. Woodhull ascertained the facts about the pistol. After the publication of her story Mr. Beecher had called his attention to the reference to a pistol, and had told him that he remembered nothing of that kind. Mr. Moulton had replied that it was not strange that he did not remember it, as no threat was made on the evening when the retraction was returned. Mr. Moulton was closely questioned during this portion of the examination, but was not disconcerted.

Mr. Moulton has hitherto appeared as the agent of Mr. Beecher in paying \$5,000 to Mr. Tilton without the knowledge of the latter. Ex-Judge Porter questioned him concerning his own financial connection with that paper and concerning its increasing expenditures.

The meeting between Mr. Tilton and Mr. Beecher on Dec. 30, 1870, had been described to the jury as relating wholly to the main cause of this action. The dismissal of Mr. Tilton from *The Independent* and *The Brooklyn Union* had nothing whatever to do with this meeting. Ex-Judge Porter elicited the fact that prior to that meeting Mr. Tilton had informed him that Mr. Bowen had threatened to dismiss him, and had described an angry interview between them in relation to Mr. Bowen's charges against Mr. Beecher. Mr. Tilton had then told him that he had no doubt that Mr. Bowen's charges against Mr. Beecher were true.

Mr. Beecher, according to the plaintiff's side, invariably shrank from making a public denial of the truth of the charges. The defense intimated that Mr. Beecher had favored a public reply to the Woodhull publication, but that Mr. Moulton had coun-

seled silence. Mr. Beecher's letter challenging Mr. Moulton to produce the letters which had been intrusted to him was read in evidence, although it had been excluded on the previous day. Mr. Moulton admitted that Mr. Tilton had assisted him in preparing a reply to this letter.

In these and other respects the cross-examination was an indirect opening of the defense. Strictly as a cross-examination, however, it was not effective, and ex-Judge Porter disappointed all who listened to him. He was too deliberate in his manner, too indirect in his questions, and too courteous in his tone. He asked three questions when one would have served as well, and he did not seem to be master of the case. Mr. Evarts suggested many questions to him at the close, and did not seem to be satisfied with the manner in which his colleague was conducting the case. Whenever Mr. Evarts rose to argue a question of law or to answer Mr. Beach's objections, the contrast between his earnestness and vigor and his colleague's caution and suavity was so strongly marked that Mr. Beecher's admirers were disposed to question the wisdom of the assignments of the counsel.

Mr. Moulton made light of the whole examination. When the argument over the admission of evidence in relation to the indictment against him and the Proctor suit was proceeding, he evinced some nervousness, but except in this instance he was cool, self-possessed, and good-humored.

When he was questioned in regard to his attendance at the Woman's Suffrage Convention in Richmond, Va., he smiled and said that his wife and son went with him, and that he introduced Mrs. Hooker as one of the speakers. Two or three times he volunteered information, and when encouraged to proceed edified Mr. Tilton's group of counsel rather than his opponents. He was asked when he had last attended a Plymouth Church meeting, and his hesitation occasioned considerable amusement until the question was modified so as to exclude the session at which he was hissed. His answers in all cases were clear and direct, and his friends were undoubtedly warranted in awarding him high praise as a witness.

#### COURT-ROOM INCIDENTS.

The court-room presented the same crowded appearance on the 19th as on the preceding days of the trial. Very few who enter in the morning leave the room before the hour of adjournment arrives. Many



of the spectators come provided with lunches, notably those who occupy seats in the gallery. Between 1 and 2 o'clock in the afternoon, ham sandwiches and mince pies are in great demand, and when the supply of these articles of indigestion fails, the hungry spectator is obliged to satisfy his appetite with a measure of roasted peanuts. After the principal characters in the great suit, the ancient vender of pies, who haunts the Court-house, ranks next in importance. He, too, appreciates his power, and bestows his favors accordingly. And his demeanor has grown cold, and haughty, and stately. This high-strung pieman has become a part of the trial now, and he brooks no familiarity. He administered yesterday to a prominent member of Plymouth Church a crushing rebuke. "These mince pies are very bad," remarked the church member in question. "Werry bad, Sir," replied the pieman; "but they're not half as bad as the langwidge as you've been a listunin' to all day." This pieman on the first day of the trial was the meekest man in the court-room.

There were ten ladies in court on the 19th. Mrs. Beecher, as usual, sat beside her husband, and on her left was the wife of Colonel Beecher. Mrs. Tilton occupied her old seat by Mrs. Shearman, Mrs. Field, and Mrs. Ovington. In the rear of the court-room were two elegantly-attired ladies, who attracted considerable attention, owing to the fact that their names could not be ascertained by the other spectators. In the gallery were two ladies, one with a young and rather pretty face, the other an elderly person, fashionably dressed. They did not seem in the least embarrassed. On each side and behind them were red shirted men who expectorated tobacco juice, and during the recess crunched peanuts and commented on the trial in coarse language. The ladies were evidently animated by feelings of curiosity quite as strong as those of their neighbors, and so they sat in their seats without leaving them once from 11 o'clock in the morning until 4 o'clock in the afternoon. Their powers of endurance must have been sadly taxed, for the air in the gallery was freighted with impurity, and besides, the ladies partook of no refreshments, despite the reproachful glances of the ancient pieman.

Franklin Woodruff during the examination in the morning, sat beside Mr. Tilton. He entered the court-room with Mr. Moulton. In the afternoon Mayor Hunter occupied a seat beside Judge Neilson.

Scattered around the court-room were several prominent residents of Brooklyn, among the number, the Rev. Justin D. Fulton, who sat next to Mr. Beecher, the Rev. Mr. Hodge, Judge Reynolds, Gen. Dakin, Gen. Catlin, Col. Keeney, Rositer Raymond, Charity Commissioner Norris, and the Rev. Mr. Halliday.

#### MOVEMENTS OF COUNSEL.

The counsel in the case attract quite as much attention now as the plaintiff and the defendant. Every consultation is narrowly watched by the spectators, and is often invested with a significance that it does not possess. The counsel on each side drew together, and their consultations were frequent. Mr. Evarts sat by ex-Judge Porter, and right behind him were Mr. Beecher, Gen. Tracy, Mr. Shearman, and John J. Hill. Mr. Beecher made numerous suggestions to Mr. Evarts during the day, and once or twice he said something which kept his counsel smiling for several minutes. Mr. Beecher himself joined in the merriment excited by his remark. Mr. Tilton seemed in a serious mood, and paid more attention to Mr. Moulton's answers than to his counsel. Messrs. Fullerton and Beach occasionally exchanged jokes, but Mr. Morris was moody and stern throughout the day. Under his table was a valise containing two immense rolls of manuscript. These were the long statements printed by Messrs. Moulton and Tilton.

The recess was marked by an incident which removes all doubt concerning ex-Judge Morris's feeling in regard to Mr. Beecher. As soon as Judge Neilson announced that the regular intermission would be taken, Mr. Morris stepped over to Mr. Porter and called his attention to one of the answers made by the witness. Mr. Beecher, observing Mr. Morris in conversation with his counsel, addressed a jocular remark to him, but Mr. Tilton's counsel deliberately continued his conversation with ex-Judge Porter. Mr. Beecher withdrew with lightened color. Ex-Judge Morris does not hesitate to denounce the pastor of Plymouth Church, in private as well as in public.

#### THE PROCEEDINGS.

At the opening of the Court on Tuesday, Jan. 19, in the Tilton-Beecher suit, ex-Judge Porter continued the cross-examination of Francis D. Moulton. The witness was held in the same hazardous path he was drawn into the previous day, with a continuous line of ambush on either hand in the shrewd lawyer's excessive suavity. He was first questioned concerning his views on the question of Woman's Rights.

MOULTON'S ADVOCACY OF WOMAN'S RIGHTS.

Mr. Porter—You have not been able to produce the account, I believe, as yet? A. I had the account, Sir, with me yesterday, and handed it to my bookkeeper this morning to put it in such shape as would make it perfectly intelligible to you, Sir; and it will be here at one o'clock. And Mr. Tilton's account, Sir, he has himself, I understand from my bookkeeper, who furnished him an account from the book which I think is in shape for you to examine if you choose.

Q. I can do it either now or at that time.

Judge Neilson—Perhaps you had better take up both together at one o'clock then.

Q. I will proceed, then, to ask you a few questions about the extent of your intimacy with Mr. Tilton. You have mentioned that Mr. Beecher was in the habit of being at your house sometimes as often as twice a day? A. Yes, Sir.

Q. Which did you see most frequently, Mr. Tilton or Mr. Beecher, during the years of your intimacy? A. I should say I saw one about as much as the other. When Mr. Beecher was in town, I saw him almost as frequently as I did Mr. Tilton—perhaps more frequently Mr. Tilton than Mr. Beecher, Sir.

Q. Which was most at your house? A. Mr. Tilton was more frequently at my house, Sir.

Q. Were you in the habit of traveling together at times? A. We had made excursions into the country, Sir, during vacation time, together. I don't remember any other traveling we did together.

Q. Excursions of what duration? A. Well, we went fishing together sometimes, perhaps for a week.

Q. Frequently? A. Not very frequently; no, Sir.

Q. Every Summer? A. No, Sir; not every Summer.

Q. Did you ever visit watering-places together? A. Yes; I have been at Narragansett with Mr. Tilton.

Q. Through how many years was this habit of intercourse in vacations extended? A. I think the first time that I went to Narragansett with Mr. Tilton was in 1863, and we may have gone together in 1869. I do not think to exceed three times—three seasons in all, Sir—fishing.

Q. Did you travel elsewhere with him at any time. A. I don't remember now, Sir, that I did.

Q. Were you West together at any time? A. Out West?

Q. Were you at the West together at any time? A. No, Sir; I don't remember that I ever went West with him.

Q. Did you meet him at the West? A. No, Sir; I think not.

Q. Were you at Washington together at any time? A. No, Sir; I think not.

Q. Did Mr. Tilton ever go to Washington for you? A. No, Sir, I think not.

Q. Where else were you in the habit of meeting Mr. Tilton besides your own house? A. Well, Sir, he generally came to my house, and at *The Golden Age* office. I used to go to *The Golden Age* office to see him some.

Q. Were you frequently there? A. Yes, I used to go there pretty frequently during the first year of *The Golden Age*.

Q. And afterwards? A. While he was editor, Sir, I was frequently at *The Golden Age* office; yes, Sir.

Q. Were you associated in any matters connected with Wo-

man's Rights? A. I was in sympathy, Sir, with the Woman's Rights movement, as was Mr. Tilton.

Q. Did you meet at conventions or assemblages in that regard? A. I do not remember, Sir, that I was ever in a Woman's Rights convention with Mr. Tilton. Yes, I was once—in Newport, Sir.

Q. Did you go together? A. I think we did; yes, Sir.

Q. Did you ever meet him in Richmond? A. In Richmond? I think not, Sir; no.

Q. Passing over those matters which relate to the account, I desire to ask you two or three questions as to the general result. You acted as his attorney in the matter with Mr. Bowen? A. I went down to see Mr. Bowen, taking a letter of authorization from Mr. Tilton to Mr. Bowen, to settle his accounts with him.

Q. Then you did act as his attorney? A. If that be an attorneyship, Sir. I think the letter of authorization is quoted in my statement.

Q. Yes, I think it is. Have you the original here? A. I think, Sir, I have, if it is in my statement. It has been among my papers, and unquestionably is now.

Mr. Evarts—Have you that, Mr. Fullerton?

Mr. Fullerton—No.

The Witness—It is among my papers, Mr. Evarts.

Mr. Evarts—Who has charge of your papers?

The Witness—I gave them to Mr. Morris—Morris and Pearsall.

Mr. Morris—What is it?

Mr. Evarts—The authority from Mr. Tilton to Mr. Moulton to represent him in the Bowen controversy. I would like to see it.

Mr. Morris—They are all here. The subpoena *duces tecum* did not specify any particular paper.

The Witness [to Mr. Morris]—It was among the papers that I handed to you.

Mr. Fullerton—It is correctly quoted in that printed book, if that will serve you.

Mr. Porter—It perhaps will.

Mr. Morris—As it was not indicated which one was wanted we have brought them all here.

The Witness—If you will allow me to take a memorandum here, Mr. Porter, of the documents you want, I will have them search for them for you.

Mr. Porter—It is marked "L." If it will be convenient to you to refer to the book, then you may do so. [Handing witness the book.]

The Witness—I will remember the phraseology of that letter without the book, I think.

Mr. Morris—We could not arrange them under the subpoena. Your subpoena called for about half a bushel of papers. We have brought them here.

Mr. Evarts—What is the reason we don't have it?

Mr. Morris—We have them here.

Mr. Evarts—Well, let us have this one.

Mr. Morris—Well, here are the papers; they are not arranged and could not be.

Mr. Evarts—They have all been classified and marked, every one.



Mr. Morris—Your subpoena does not specify anything.

Mr. Evarts—No, but they are all classified and published.

Mr. Fullerton—We will look it out for you. You can read from the book and then substitute this one when it is found.

Mr. Evarts—If you cannot find it now you cannot find it at any time, I suppose.

Mr. Morris—We can find it now, Mr. Evarts, if you want to wait for an hour to do it.

Mr. Evarts—Well, that is your affair, not ours.

Mr. Morris—No, Sir; it is not our affair; we have brought the papers you called for.

Mr. Evarts—They seem to be very well arranged there, all in envelopes.

Mr. Fullerton—Those that we introduced are arranged in envelopes; if this paper is deemed of importance, I suggest to the other side that they use the printed copy, and we will substitute the original whenever it is found.

Mr. Evarts—If you will continue your search just the same, why we will go on.

Mr. Fullerton—Of course we will.

Mr. Porter—You say you remember the terms of this instrument; well, I can read it just as it is. [Reading.]

BROOKLYN, Jan. 2, 1871.

MR. H. C. BOWEN.

SIR:—I hereby authorize Mr. Francis D. Moulton to act in my behalf in full settlement with you of all my accounts growing out of my contracts for services to *The Independent* and *The Brooklyn Daily Union*.

THEO. TILTON.

[Marked "Exhibit D 4."]

Q. That was the day after he received the formal notice of dismissal? A. It was two days after he received it.

Q. Acting under that you secured how much for Mr. Tilton from Mr. Bowen?

Mr. Beach—We object to that, Sir.

Mr. Porter—On what ground?

Mr. Beach—That it is totally immaterial.

Mr. Porter—It is immaterial, except as it shows the friendly service on the part of the witness.

Mr. Morris—The amount does not.

Judge Neilson—Well, if it is a large amount it is a large service. I think it well enough to take it.

Mr. Beach—If your Honor will be kind enough to note our exception?

Q. About what amount? A. The account under the contract was finally settled by arbitration, and \$7,000—

Mr. Beach—The question was what you secured, not what was settled by arbitration.

Judge Neilson—He means to say secured in that way.

Q. What amount in all did you receive from Mr. Beecher? A. What amount in all did I receive from who?

Q. From Mr. Beecher?

Mr. Beach—For what purpose?

Mr. Porter—For any purpose.

Mr. Beach—Well, I object to that—what amount he received from Mr. Beecher for any purpose.

Judge Neilson—Well, for the purposes he mentioned.

Mr. Porter—Did you ever receive anything from Mr. Beecher except for the purposes you mentioned? A. For the tuition of

Bessie Turner and for the purpose of assisting Mr. Tilton; for no other purpose—and his family.

Q. What amount in all did you receive from Mr. Beecher? A. I have not the figures with me to state the exact amount that I received. There was \$5,000 in one amount that I received from Mr. Beecher. That was received, I believe, May 2d, 1873; and the other amounts were received from about June, 1873, down to May, 1873—various sums.

Q. Have you no idea of about the aggregate? A. I don't remember, Sir.

Mr. Beach—June, 1873, to May, 1873? A. No, Sir; not June, 1873; June, 1871, I meant. Somewhere between \$6,000 and \$7,000.

Q. In all? A. Yes, Sir.

#### MOULTON AND THE LADIES IN THE CASE.

Mr. Porter—Have you ever been on friendly terms with Mrs. Beecher? A. I think I have met her three or four times; that is all, Sir.

Q. Did you ever visit her? A. I never did visit her.

Q. Your intercourse with her has been very slight, I think? A. Very slight, Sir.

Q. Were you ever on friendly terms with Mrs. Morse, the mother of Mrs. Tilton? A. I have met Mrs. Morse several times, very pleasantly when I have met her, Sir.

Q. Were your relations those of friends? A. We were not unfriendly. There was no particular friendship, I think—what could be called friendship.

Q. Mere acquaintance? A. Acquaintance.

Q. Where did you meet her? A. I think I have met her at Mr. Tilton's house, and, I believe, once in Schermerhorn-st.

Q. You mean you met her in the street? A. No, Sir; in the house where she was living, at Schermerhorn-st.

Mr. Evarts—At her own house? A. She was living in a house in Schermerhorn-st.; yes, Sir.

Mr. Porter—Did you go there to see her? A. I went there to see her; yes, Sir.

Q. When was that? A. I don't remember what year that was.

Q. I would like the time as near as you can fix it? A. I will try and fix it before I get through with my testimony.

Q. Very well. You know Mrs. Hooker? A. I have met Mrs. Hooker two or three times, Sir.

Q. Where? A. I met her once in Richmond, and I have—

Q. On what occasion? A. She was there and addressed a Woman's Rights meeting—a Woman's Suffrage meeting in Richmond, in 1871.

Q. Did you take any part in the meeting? A. Yes, Sir.

Q. What time in 1871? A. I think it was in March, 1871.

Q. Do you remember the particular day of March? A. I really do not, Sir.

Q. What was your part in the meeting? A. I either introduced Mrs. Hooker or Paulina Wright Davis to the audience, upon the solicitation, I think, of Mrs. Hooker or of Mrs. Paulina Wright Davis; I don't remember

Q. You were not the presiding officer? A. I was not the presiding officer; no.

Q. And did not at any time preside? A. No, I did not preside. They were there alone, unattended, and they desired me to introduce them.

Q. You did not go with them? A. I did not, Sir.

Q. Nor with either of them? A. No, Sir.

Q. Nor with any other lady? A. With my wife and a friend, Mrs. Sarah Sutherland Eddy and her daughter.

Q. I did not hear. A. Mrs. Sarah Sutherland Eddy and her daughter, and my wife and son.

Q. Were they delegates to the convention? A. They were not, Sir.

Q. This is the extent of your intercourse—acquaintance with Mrs. Hooker? A. Yes; I think that is about the extent of it.

Q. Had you any interview with her in the year 1874? A. No, Sir.

Q. You mentioned something in relation to Mrs. Beecher in connection with an inquiry as to whether the family difficulties were alluded to in one of your interviews at the house. Will you at this point state what was said in regard to her? A. I mentioned what, Sir?

Q. On Judge Fullerton's examination you mentioned that something was said of Mrs. Beecher in connection with the family difficulties at one of your interviews at Mr. Beecher's house. Will you state what was said on that subject? A. I think on the evening of December the 31st, when I went to Mr. Beecher's house, I said to him, "I understand that Mrs. Beecher is saying—is repeating stories against Mr. Tilton. Now, such stories ought to be stopped; they only tend to incense." And he said to me that Mrs. Beecher knew Mrs. Morse was a dangerous woman—or that is the substance of what he said—and yet her enmity to Theodore Tilton induced her to listen, or might induce her to listen, to Mrs. Morse; but he would try to control that. That is as near as I can remember.

Q. Was the name of any person connected with those stories mentioned, except the name of Mr. Tilton? A. Not, I think, at that interview, Sir. There may have been at that interview.

Q. Did you state what was the nature of the stories? A. I don't think I did, Sir; I don't remember now that I did.

Q. Do you remember whether you did or did not? A. Whether I stated the nature of the stories that Mr. Beecher was repeating—is that the question?

Q. My question is, whether you remember either that you did or that you did not? A. Well, will you state, then, the question exactly, so that I can understand it; let me say what I mean.

Q. Do you remember whether you did or did not refer to the nature of those stories? A. My impression is that I did.

Q. You don't remember in what terms? A. I do not remember the terms; no, Sir, just at the present moment.

Q. While you were acting as the mutual friend of these parties, Mr. Beecher very generally acted upon your advice, didn't he? A. He sometimes did, Sir.

Q. My question was whether he did very generally. A. I should say that he did very generally.

Q. Did Mr. Tilton quite frequently act contrary to your ad-

vice? A. Yes, Sir; he did sometimes act contrary to my advice.

Q. You disapproved of his sending to Mr. Beecher by the hand of Mr. Bowen the letter requiring him to resign and leave town, and so told him, did you not? A. Without the signature of Mr. Bowen I disapproved of it.

Q. It was only of that omission that you disapproved? A. That is all that I remember having disapproved.

Q. When was the letter to Mr. Bowen written—on what day?

A. On December 26th, I believe, Sir, 1870.

Q. It purports to bear date on the first of January, '71; when was it in fact—

Mr. Morris—No, no; you are mistaken; 26th December.

Mr. Porter—You and I are referring to two different letters. [To the witness.] When was the letter purporting to bear date January 1st, 1871, written? A. The preparation of that letter was commenced either the night of the 31st—commenced either the night of the 31st December, '70, or the night of January 1st, or the day of January 1st, 1871.

Q. When was the letter completed in the form which it finally assumed? A. Well, Sir, very shortly; it was either completed January 1st or 2d, I think.

Q. Was it sent to Mr. Bowen? A. No, Sir; it was not sent to Mr. Bowen.

Q. When did you first see it before—when did you first see what he was writing, before or after its completion? A. During the writing of the letter, Sir, I consulted with him as to the writing.

Mr. Fullerton—Judge Porter, there are two letters of that date.

Mr. Porter—He knows the one of which I am inquiring.

Mr. Evarts—The letter from Tilton to Bowen.

Mr. Porter—Did you disapprove of that letter? A. Did I disapprove of his writing it?

Q. Yes. A. No, Sir; I don't think I did at the time that he was writing it.

Q. Did you condemn it afterwards? A. I told him I thought he ought not to publish it, Sir, afterwards.

Q. Did you advise against its publication? A. I did.

Q. He published it, notwithstanding your advice? A. When did he publish it, Sir; what publication do you refer to?

Q. I think it was on the 1st.

Mr. Morris—No; you are mistaken, Judge Porter; he never published it.

Mr. Porter—When did you first see it in print, as nearly as you now remember?

Mr. Beach—There were two letters, Sir, bearing the date inquired of by counsel; it seems to me there ought to be some discrimination between them.

Q. Do you remember if there is the least doubt—you understand me as alluding to the letter, of course, in which he repeated the charges he imputed to Mr. Bowen against Mr. Beecher? A. That's the letter that I am addressing myself to.

Mr. Evarts—Were there two letters to Mr. Bowen on that date?

Mr. Beach—No, Sir; there are two letters of Jan. 1, '71.

Q. Well; but I think I stated the letter to Mr. Bowen. When



did you first see that letter to Mr. Bowen published? A. I think, Sir, it was published April 29th, 1873, in *The Brooklyn Sunday Sun*, and then quoted into *The Brooklyn Eagle*, if I am correct as to date.

Q. Had you advised him against its publication? A. I did not know anything about that publication, Sir, nor did Mr. Tilton, as he told me afterwards.

Q. Had you advised against its publication before that time? A. In January, '70; certainly, Sir.

Q. How is that? A. In January, '71; certainly, Sir.

Q. You had advised him? A. Yes, Sir.

Mr. Evarts—If your Honor please, the observation of the witness that it was published without Mr. Tilton's knowledge, as he told him afterwards—

Judge Neilson—It will be stricken out.

Mr. Evarts—It will be stricken out; and, although it may be natural enough to the witness, yet he will be so good as to refrain—

The Witness—I saw my mistake immediately after I made it, Mr. Evarts. I thank you for emphasizing it.

Q. When was it printed by Mr. Tilton? A. When was it printed by Mr. Tilton? I do not remember, Sir, that it was ever printed by Mr. Tilton. If you will call my attention to the date of publication—

Q. Was it printed in his paper, *The Golden Age*? A. I do not remember, Sir, that it was printed in his paper, *The Golden Age*:

Q. Were proofs set up for the purpose of publication in *The Golden Age*, and did you see those proofs?

Mr. Fullerton—Well, one moment; that's a double question. I object to it, unless he testifies of his own knowledge.

Mr. Porter [to the Witness]—You hear Judge Fullerton's suggestion?

The Witness—Now, Sir, if you will repeat the question, I will try to answer it. Mr. Fullerton's objection put the question out of my mind.

Q. Were proofs prepared for publication in *The Golden Age*, and did you see those proofs? A. I saw proofs of an article which was prepared by Mr. Tilton, into which was incorporated this letter of Mr. Bowen's.

Q. Did you then advise against its publication? A. I did then advise against its publication.

Q. Who showed you those proofs? A. I think Mr. Tilton brought them to me, Sir.

Q. Did you see the poem entitled "Sir Marmaduke's Musings" indited by Mr. Tilton? A. Did I see that poem?—after it was printed, I believe, Sir.

Q. You hadn't seen it before? A. No, Sir.

Q. Heard nothing of it before? A. I don't think I ever heard anything of it before.

Q. You disapproved of its publication? A. I thought it ought not to have been published, Sir.

Q. And so told him? A. I did tell him so.

Q. Did you see the biography—did you know of his preparation of the biography of Woodhull before it appeared? A. I never heard it read, Sir, before it appeared.

Q. Did you hear of it, is my question? A. I don't remember,

Sir, that I heard of the biography of Victoria Woodhull before it appeared; I don't remember that I did.

Q. You did afterwards? A. I did afterwards; yes, Sir.

Q. Did you approve of it?

Mr. Beach—I object to that question.

Judge Neilson—Oh! I think I will admit it; it has a bearing upon the mind of the witness perhaps.

Mr. Beach—I except, Sir.

Mr. Porter—Did you approve or condemn it? A. I didn't approve of the publication of it, Sir.

#### TILTON'S OBSCURE FRIENDS.

Q. Do you remember the letter to his friend in the West? A. I remember a letter; yes, Sir.

Q. I will ask you to produce the letter.

Mr. Fullerton—What is the letter?

Mr. Porter—From Tilton to a friend in the West.

Mr. Fullerton—Well, we are not the custodian of that letter.

Mr. Evarts—It is one of the letters we have given notice to produce.

Mr. Fullerton—Produce a letter written to somebody out West?

Mr. Evarts—We don't know that—whether there was anybody out West; there is a letter called "a letter to a friend in the West." There is a variety of friends; there is a "Complaining Friend," that is one of them; then there is a letter to a "Friend in the West," which is another, and it is dated December 31st, 1872. Now, if you have got that letter we should like to have it.

The Witness—What page is it on, Mr. Evarts?

Mr. Evarts—It is page 273 of this book. We have given notice to the plaintiff, and we have subpoenaed the witness to have the letter.

Mr. Shearman—Mr. Moulton says in his statement, "it is here produced."

Mr. Fullerton—Mr. Moulton's statement is not in the case. [A paper handed to witness]

Q. I ask if that is a letter written by Mr. Tilton? A. This is in Mr. Tilton's handwriting; yes, Sir.

Mr. Evarts—Is this produced by the plaintiff or by the witness?

Mr. Beach—I don't know where it came from.

Mr. Evarts—Nor I; I only ask for information. It came from some one.

Mr. Morris—Well, produced by me from my office. Where it came from, I don't know.

Mr. Beach—It is produced by Mr. Morris.

Mr. Evarts—Then you don't say whether you produce it from the plaintiff or from the witness?

Mr. Morris—I don't know; I have got papers here from both parties.

Mr. Evarts—We can't find it out from one who don't know.

Mr. Morris—No, Sir.

Mr. Porter—I read that letter in evidence.

174 LIVINGSTON STREET,  
BROOKLYN, December 31, 1872.

MY DEAR FRIEND: I owe you a long letter. I am unwell, and a prisoner in the house, leaning back in leather-cushioned

dieness, and writing on my chair-board before the fire. Perhaps you wonder that I have a fire, or anything but a hearth-stone, broken and crumbled, since the world has been told that my household is in ruins. And yet it is more like your last letter—brimful of love and wit, and sparkling like a fountain in midwinter.

Nevertheless you are right. I am in trouble, and I hardly see a path out of it.

It is just two years ago to-day—this very day—the last of the year—that Mr. Bowen lifted his hammer, and with an unjust blow smote asunder my two contracts, one with *The Independent* and the other with *The Brooklyn Union*. The public little suspects that this act of his turned on his fear to meet the consequences of horrible charges which he made against Henry Ward Beecher. I have kept quiet on the subject for two years through an unwillingness to harm others even for the sake of righting myself before the public. But having trusted to time for my vindication, I find that time has only thickened my difficulties until these now buffet me like a storm.

You know that Bowen long ago paid to me the assessed pecuniary damages which grew out of his breaking of the contracts, and gave me a written vindication of my course, and something like an apology for his. This settlement, so far as I am concerned, is final.

But Bowen's assassinating dagger drawn against Beecher has proved as unable as Macbeth's to "trammel up the consequence." And the consequence is that the air of Brooklyn is rife with stories against its chief clergyman, not growing out of the Woodhull scandal merely, but exhaled with ever-fresh foulness, like mephitic vapors, from Bowen's own charge against Beecher.

Verily, the tongue is a wild beast that no man can tame, and, like a wolf, it is now seeking to devour the chief shepherd of the flock, together, also, with my own pretty lambs.

For the last four or five weeks, or ever since I saw the Woodhull libel, I have hardly had a restful day, and I frequently dream the whole thing over at night, waking the next morning unfit for work.

Have you any conception of what it is to suffer the keenest possible injustice? If not, come and learn of me.

To say nothing of the wrong and insult to my wife, in whose sorrow I have greater sorrow, I have to bear the additional indignity of being misconstrued by half the public and by many friends.

For instance, it is supposed that I had a conspirator's hand in this unholy business, whereas I am as innocent of it as of the Nathan murder.

It is hinted that the 'libelous article was actually written by me; whereas (being in the north of New Hampshire), I did not know of its existence till a week after it had convulsed my own city and family. My wife never named it in her letters to me lest it should spoil my mood for public speaking. (You know I was then toiling day and night for Mr. Greeley's sake).

Then, too, it is the sneer of the clubs that I have degenerated into an apostle of free-love; whereas the whole body of my writings stands like a monument against this execrable theory.

Moreover, it is charged that I am in financial and other relations with Mrs. Woodhull; whereas I have not spoken to, nor met, nor seen her for nearly a year.

The history of my acquaintance with her is this: In the Spring of 1871, a few months after Bowen charged Beecher with the most hideous crime known to human nature, and had slammed the door of *The Independent* in my face, and when I was toiling like Hercules to keep the scandal from the public, then it was that Mrs. Woodhull, hitherto a total stranger to me, suddenly sent for me and poured into my ears, not the Bowen scandal, but a new one of her own—namely, almost the same identical tale which she printed a few weeks ago. Think of it! When I was doing my best to suppress one earthquake, Mrs. Woodhull suddenly

stood before me portentous with another. What was I to do? I resolved at all hazards to keep back the new avalanche until I could securely tie up the original storm. My fear was that she would publish what she told to me, and, to prevent this catastrophe, I resolved (and, as the result proves, like a fool, and yet with a fool's innocent and pure motive) to make her such a friend of mine that she would never think of doing me such a harm. So I rendered her some important services (including especially some labors of pen and ink), all with a view to put and hold her under an obligation to me and mine.

In so acting towards her I found, to my glad surprise and astonishment, that she rose almost as high in my estimation as she had done with Lucretia Mott, Mrs. H. B. Stanton, Isabella Beecher Hooker, and other excellent women. Nobody who has not met Mrs. Woodhull can have an adequate idea of the admirable impression which she is capable of producing on serious persons. Moreover, I felt that the current denunciations against her were outrageously unjust, and that, like myself, she had been put in a false position before the public, and I sympathized keenly with the aggravation of spirit which this produces. This fact lent a zeal to all I said in her defense.

Nor was it till after I had known her for a number of months, and when I discovered her purpose to libel a dozen representative women of the suffrage movement, that I suddenly opened my eyes to her real tendencies to mischief, and then it was that I indignantly repudiated her acquaintance, and have never seen her since.

Hence her late tirade.

Well, it is over, and I am left to be the chief sufferer in the public estimation.

What to do in the emergency (which is not clearing, but clouding itself daily) I have not yet decided. What I *could* do would be to take from my writing-desk, and publish to-morrow morning, the prepared narrative and vindication, which with facts and documents, my legal advisers pronounce complete.

This would explain and clarify everything, both great and small (including the Woodhull episode, which is but a minor part of the whole case), but if I publish it, I must not only violate a kind of honorable objection to be silent, which I had voluntarily imposed upon myself, but I must put my old friend Bowen to a serious risk of being smitten dead by Beecher's hand.

How far Bowen would deserve his fate I cannot say, but I know that all Plymouth Church would hunt him as a rat.

Well, perhaps the future will unravel my skein for me without my own hand; but whatever happens to my weather-beaten self, I wish to you, O prosperous comrade, a happy New Year.

Fraternally yours.

THEODORE TILTON.

P. S.—Before sending this long letter (which pays my debt to you) I have read it to my wife, who desires to supplement it by sending her love and good will to the little white cottage and its little red cheeks.

Q. From whom did you receive that letter? A. From Mr. Tilton.

[Copy of letter marked Exhibit D 5].

Q. At its date? A. I don't remember whether at its date or not.

Q. Do you remember whether it was at or about its date? A. I don't remember that.

Q. To whom is it addressed? A. I don't remember.

Q. Do you remember that it is addressed to any one.

Mr. Fullerton—One moment. The letter itself is here, and speaks for itself.

Mr. Porter—I have not seen the original.



Mr. Fullerton—I think you can tell yourself whether it is addressed to any one.

Mr. Evarts—We cannot see it is addressed to any one.

Q. Do you know to whom that letter was written? A. No, Sir; I do not.

Q. You did not hear from Mr. Tilton? A. I don't know but what I might have heard that it was his intention to send it to a party; I don't know that it was ever sent to a party.

Q. You have no knowledge of its being sent? A. No, Sir.

Q. It was deposited with you among the papers in this case? A. It was given to me.

Q. You have held it ever since? A. I suppose I have; yes, Sir.

#### TILTON'S RELATIONS WITH WOODHULL.

Q. You know Mrs. Woodhull? A. I have known her; yes, Sir.

Q. When did you first see her? A. I think in the Spring of 1871.

Q. At what time in the Spring? A. I think it was somewhere in April, 1871.

Q. Do you remember what time in April? A. I do not remember distinctly the time in April, Sir.

Q. Where did you first see her? A. I think I met her first at her house.

Q. In New-York? A. Yes, Sir.

Q. Where did you next meet her? A. I think the next meeting was at Mr. Theodore Tilton's house.

Q. When was that? A. Shortly afterwards. I can fix the date by the card in *The World*. It was somewhere about the time of that card.

Mr. Porter [To the Witness:]—You will find the date of that card at page 48 of the book.

The Witness—The date of the card in *The World*? Does it bear date, Sir?

Mr. Shearman—May 22d, 1871.

Q. By Mr. Porter—You had not met her nor seen her in the meantime? A. No, Sir; the time I met her was in consequence of that card in *The World*—it was after the card in *The World* that I saw her.

Q. Shortly after? A. Yes, Sir; shortly after.

Q. You have no means of fixing the precise date? A. It was after that; I cannot fix the exact date; it was within a few days I think.

Q. Before that interview you had never seen her but once? A. I don't think I had ever seen her at all; I had never seen her before the interview at all.

Q. That was the occasion of the first interview? A. Yes Sir; the letter was the occasion of the first interview, and then I saw her at Theodore Tilton's house.

Mr. Beach—Afterwards? A. Yes, Sir; afterwards.

Q. By Mr. Porter—How long after the first interview, should you say? A. I should say within a day or two.

Q. Who was present at that interview? A. Mr. Tilton.

Q. No one else? A. I don't remember at present whether there was anybody else.

Q. You had a conversation with her at that time? A. Yes, Sir.

Q. After that time did you meet her frequently? A. I met her—well I saw her whenever there was occasion for it; I should not say frequently.

Q. But from time to time? A. From time to time.

Q. When did you last see her? A. The last time I saw her I think was in the Spring before the publication of the Woodhull story. It was in April, 1872, I think—in the Spring of 1872, I should think.

Q. Where did you see her then? A. I don't remember. It was at a house where she was living—16th street, I think; I don't remember the street.

Q. In her own house? A. It was in her own house; yes, Sir.

Q. You visited her with others? A. I was with Theodore Tilton that evening, Sir; the last time I saw her.

Q. Had you visited her with him before? A. Yes, Sir.

Q. Several times before? A. Several times before. At that house do you mean?

Q. At her residence? A. Yes, Sir.

Q. Where was it at that time—in 16th street? A. I won't be sure. I don't remember the street definitely enough to say.

Q. Do you remember where it was? A. It was in 16th or 23d street, or somewhere around there. She lived in 38th street.

Q. Were you ever there in the evening? A. Yes, Sir.

Q. Usually? A. Usually in the evening.

Q. Did you ever meet her elsewhere than at her residence and at your residence and at Mr. Tilton's?

Mr. Beach—He didn't say he met her at his house.

By Mr. Porter—Did you ever meet her elsewhere than at her own residence and at Mr. Tilton's? A. Yes, Sir.

Q. Where? A. At my own house in Remsen-st.

Q. Did you ever meet her at any other place? A. I don't remember at present.

Q. Were you ever in the same house in which she was staying over night? A. I don't remember that I ever was.

Q. You have a good memory? A. Tolerably good memory; yes, Sir.

Q. Did you ever travel with her? A. No, Sir.

Q. Did you ever meet her at any place outside of New York and Brooklyn? A. I don't remember at present that I ever did.

Q. Do you remember that you did not? A. If you could jog my memory by asking me if I met her at a certain place. I don't remember now that I ever met her at any other place than Brooklyn.

Q. Do you now remember that you did not? A. I should say I now remember that I did not.

Q. How long were your interviews usually when you went to her house? A. Some of them were an hour long, and some two hours.

Q. Was your intercourse with her confined to the subject matter of Mr. Tilton and Mr. Beecher? A. Not always; no, Sir.

Q. Did you make statements to her in regard to that matter? A. I did; I have made statements to her with regard to it—with reference to the stories against Mr. Beecher.

Q. Did you in regard to Mr. Tilton? A. Did I make statements to her with regard to Mr. Tilton?

Q. Yes, Sir? A. I have made statements to her with regard to Mr. Tilton, yes, Sir.

Q. And with regard to particular ladies in connection with Mr. Tilton? A. I don't know that I ever mentioned the names of any ladies in connection with Mr. Tilton's name.

Q. Nor she? A. I don't remember that she did.

Q. Do you remember a conversation with her in relation to the interview of the 31st of December, 1870? A. Will you please put that question again?

Q. A conversation with her in reference to what transpired with Mr. Beecher on the 31st of December, 1870? A. No, Sir.

Q. Were you present at a conversation between her and Mr. Tilton in regard to what took place in that interview? A. No, Sir; I don't remember that I ever was.

Q. Did you read her published statement? A. I don't know that I read all of it.

Q. Do you know that you did not? A. I think I did not read all of it; I think I never have read all of it.

Q. What part was it you omitted? A. Well, I don't really remember what part I did omit; I knew the general drift of it.

Q. Did you state to her that you took a pistol, and went to Mr. Beecher and demanded the letter of Mrs. Tilton under penalty of instant death. A. No, Sir; I did not.

Q. Did you state anything to that effect? A. No, Sir.

Q. Did you, in that or in any other conversation, describe to her the piteous and abject beseeching of Mr. Beecher not to be exposed to the public? A. No, Sir.

Q. Nothing of that kind occurred? A. No, Sir. You asked me a moment ago, Judge Porter, if you allow me, whether I had read any part of that statement, or whether I had read the whole of it. I can tell you I did read the part of the pistol scene, and I can tell you something that would be of interest to you in regard to that. Shall I say so?

Q. If you please. A. Mr. Beecher asked me about that part of it that referred to the pistol scene, and asked me if I remembered anything about the pistol part. He said he didn't. It didn't make enough impression on him.

Q. Is that all? A. Yes, that is all—that is about all of it.

Q. You told him you did not? A. I said to Mr. Beecher, "I remember about the pistol scene; I remember precisely what there was about it; of course, there was no threat, and I don't wonder that you don't remember it."

Q. Did you ever ride with Mrs. Woodhull? A. I don't remember at present that I ever rode with Mrs. Woodhull; I don't recall it.

Q. Do you remember bringing her to your house in a carriage? A. I don't remember bringing her to my house in a carriage; I may have done so, but I don't think so.

Q. Do you remember a conversation with her in reference to procuring Mr. Beecher to preside at her meeting? A. Do I remember a conversation with her of my own?

Q. Yes, Sir. A. Or a conversation of Mr. Beecher with her?

Q. A conversation with her? A. Yes, Sir.

Q. Between yourself and her? A. Yes, Sir; we held a conversation at my house concerning it. She came there to see Mr. Beecher.

Q. Had you no conversation with her concerning it before? A. I don't remember that I had any conversation with her before. That letter was the cause of that interview.

Q. Had you heard of that letter before you heard of it from him? A. Before I heard of it from Mr. Beecher? I don't remember whether the letter was brought to me by Mr. Beecher or not; I think it was brought to me by Mr. Beecher. My statement will tell that if you will refer to it. I don't remember now how the letter was addressed.

Q. Had you heard of the project of her procuring him to preside before that letter was sent to you? A. No, Sir; I don't think I had.

Q. Do you know that you had not? A. I shall say now that I had not.

Q. Had you had any conversation with Mr. Tilton in regard to his presiding there? A. In regard to Mr. Tilton presiding there?

Q. In regard to Mr. Beecher presiding there? A. I had a conversation with Mr. Tilton the same day that Mrs. Woodhull and Mr. Beecher were at my house.

Q. Had you had any conversation with him before that? A. I don't remember that I had.

Q. Do you remember that you had not? A. I do now remember that I had not. If I should make any statement about it, I should make that statement.

Q. Do you mean that you remember now that you had no such conversation? A. I put it in the other way. I don't remember that I had any such conversation, and I don't think I did have. That is the best of my recollection.

Q. You do not remember that you did not have. Am I right? A. I cannot state it in that way, Sir, and state the truth; I say that I don't remember, and if I were undertaking to make a truthful statement to any one, I should say I had not, and deem it a truthful statement.

Q. Did you tell Mrs. Woodhull that you and Mrs. Tilton did not want Mr. Beecher to know that that letter had come at your instance? A. Did I tell Mrs. Woodhull that—ask that question again, please.

Q. Did you tell Mrs. Woodhull that you did not want Mr. Beecher to know that that letter to him came at your instance? A. No, Sir; I didn't tell Mrs. Woodhull that.

Q. Nor anything to that effect? A. No, Sir; I did not.

Q. Or at Mr. Tilton's instance? A. No, Sir.

Q. With whom did Mrs. Woodhull leave your house on that occasion? A. I don't remember.

Q. She did not remain that night? A. No, Sir; I don't think she remained that night.

Q. She never remained a night at your house? A. I don't remember that she ever did.

Q. Do you remember that she did not? A. I think I am stating the truth—I know I am stating what I believe to be the truth when I state that she did not.

Q. Did you on different occasions meet her at Theodore Tilton's? A. I think I met her at Theodore Tilton's—was at Theodore Tilton's with her twice.



Q. Only twice? A. Twice.

Q. You never met her except on those two occasions at his house? A. At his house; those are the only two I remember.

Q. When you visited her house did you ever find Mr. Tilton there when you did not go there in company with him? A. When I visited her house—please put that question again?

Q. When you visited her residence did you ever find Mr. Tilton there when you had not gone there together? A. I think not.

Q. Did he always leave when you left? A. I think he did; yes, Sir, we left together.

Q. Do you remember that you did? A. I should state, when I state what I believe to be the truth, that we left together.

Q. You were not aware of his being there on any other occasions except when you were there? A. No, Sir.

Q. No allusion was made in their conversation to interviews they had had when you were not present? A. I don't remember of any.

Q. You disapproved also of the Bacon Letter? A. Yes, Sir; I did.

Q. Advised against its publication? A. Yes, Sir.

Q. Did you advise against Mr. Tilton's first statement to the Committee? A. Well, which do you consider his first statement? He made three. There is a first statement, a second statement, and a third statement. One was verbal, if I remember right.

Q. They were not to the Committee? A. Yes, Sir.

Q. All three? A. Yes, Sir.

Q. The sworn statement. You remember the one which he called the sworn statement? A. Yes, Sir; that is the second statement.

Q. Did you advise him against presenting that statement to the Committee? A. I did; yes, Sir.

Q. Do you know how Mrs. Woodhull found out about that pistol affair? A. I do not.

Q. You only know it was not from you? A. I know that.

Q. And that it was never the subject of conversation between you and her? A. Never to my recollection.

Q. Do you remember that it was not? A. Never, Sir; never.

Q. Prior to your breach with Mr. Beecher had you told the pistol affair to any one else? A. No, Sir; not that I know of, except to my—; no, Sir; I don't think I did.

Q. To no one but Mr. Tilton? A. I don't think I ever did.

Q. I assume you did not? A. Not to Mr. Tilton.

Q. You reported the fact of the interview and the result of it to Mr. Tilton? A. I reported the interview, exactly what occurred there.

#### WHERE TILTON AND MOULTON DISAGREED.

Q. I have reference now to several points in which you disapproved of the course of Mr. Tilton. Did he propose to publish the true statement, as it was called? A. He talked about publishing the true statement; yes, Sir.

Q. Did you advise against it? A. Yes, Sir.

Q. He finally abandoned it? A. Yes, Sir; it never was published.

Q. It never was published? A. No, sir.

Q. Now, in regard to your advice to Mr. Beecher, did you condemn Mr. Beecher for obtaining the retraction from Mrs. Tilton? A. I did, Sir.

Q. Did you condemn him for wishing to have it preserved for the protection of his family and his memory, in case of his death? A. I condemned? I don't remember having condemned him for that.

Q. Did you advise him never to see Mr. Tilton? A. Did I advise him never to see Mr. Tilton?

Q. Yes, Sir? A. On that occasion?

Q. Personally? A. Yes, Sir.

Q. At the interview on the 31st of December? A. Did I advise Mr. Beecher not to see Mr. Tilton?

Q. Not to see him in Mr. Tilton's present exasperated mood? A. I don't think I did.

Q. Did you on the 1st of January? A. Advise him not to see Mr. Tilton?

Q. Not to see him? A. I don't think I did.

Q. Did you at any time? A. I don't remember that I have.

Q. Did you advise him to communicate with him through you, rather than personally? A. I don't think I ever did.

Q. Did you advise him not to publish a card denying the Woodhull calumny? A. Did I advise Mr. Beecher not to?

Q. Not to? A. I advised silence, if that is what you mean.

Q. The policy of silence? A. Yes, Sir.

Q. He spoke of publishing a denial of the libel shortly after its publication, did he not? A. We discussed whether that could be done or not, I think.

Q. You advised against it? A. I did not see how it could be done.

Q. And when you gave that advice you had not read the Woodhull libel? A. Not all of it; I understood it very well, what it charged.

Q. Have you read it down to this hour? A. I don't think I have read all of it to this hour.

Q. How do you understand its contents without reading it? A. Well, I had had conversations with people who had read it, Sir.

Q. And you inferred that you had a full report of its contents? A. I knew the charge against Mr. Beecher that that article contained.

Q. You knew it was to come before it appeared, did you not? A. Oh, no, Sir. No, Sir; I did not.

Q. You didn't need to read it in order to find out what they did charge? A. I needed to read a portion of it to find out what they did charge.

Q. How by reading a portion relating to yourself could you find out what they charged against Mr. Beecher? A. I read more than that, Sir.

Q. Did you read all that portion of the article which was prejudicial to Mr. Beecher? A. I think I did; yes, Sir.

Q. All that related to yourself? A. I think I did; yes, Sir.

Q. What else did the article contain? A. I don't know. (Laughter.)

Q. When, finally, Mr. Beecher insisted upon publishing a

card in *The Eagle*, you exercised the power he gave you to correct it? A. When what, Sir?

Q. Please refer to page 247, and you will more readily understand my question. Were the changes in the form of the card, any of them, made by you? A. Mr. Kinsella of *The Eagle* wrote the article as it appeared in *The Eagle*, and the alterations were made by him, therefore, from the card.

Q. At your suggestion and with your concurrence? A. No, Sir; with my concurrence afterwards.

Q. Mr. Beecher's card was short. Allow me to call your attention to the language, and give your reason for the change? [Reading.]

"I have seen in the morning papers that application has been made to Mrs. Victoria Woodhull for certain letters of mine supposed to contain information respecting certain infamous stories against me. She has two business letters, one declining an invitation to a suffrage meeting, and the other declining to give her assistance solicited.

These, and all letters of mine in the hands of any other persons, they have my cordial consent to publish. I will only add, in this connection, that the stories and rumors which have, for a time, been circulated about me, are grossly untrue, and I stamp them, in general and in particular, as utterly false."

Q. Do you remember why you concurred in striking out the word "false," and substituting a repetition of the word "untrue" in the same sentence? A. Do I remember what?

Q. Do you remember why you concurred in striking out the word "false," and inserting in lieu of it a repetition in the same sentence of the word "untrue?" A. I don't remember the reason why. The phraseology was made by Mr. Kinsella, of *The Eagle*.

Mr. Fullerton (to Mr. Porter)—Judge Porter, I think this a misprint in the book.

Mr. Porter—You read it yesterday, "utterly false."

Mr. Morris—We will produce the original.

Mr. Everts—It is "Exhibit 28."

Mr. Porter—I see the report yesterday was erroneous in accordance with the book, and not the Exhibit. The word should be "false."

#### GEN. BUTLER SERVING WITHOUT FEE.

Q. You disapproved and condemned Mr. Beecher calling a Committee of Investigation, did you not? A. I told him I thought it might prove a mistake.

Q. And you refused his application to give him access to the documents? A. By advice of counsel I wrote him the letter which I did on August 4th.

Q. By advice of counsel? A. Yes, Sir; I submitted his letter of July 24th, which Mr. Tracy brought to me, to my counsel.

Q. Were you in litigation at that time? A. No, Sir.

Q. Did you expect to be? A. No, Sir.

Q. Perhaps you mean, then, your adviser? A. Adviser, if you choose; that's what I mean by my adviser. I had not retained anybody as counsel; I had not paid anybody a counsel fee as a lawyer.

Q. Who was it that advised you in that way? A. Gen. Butler.

Q. When did you first confer with him? A. He wrote me a letter on July 29th or 30th, advising—

Judge Neilson—Don't state what he said.

Mr. Porter—Was that the first of your seeing him? A. That was the first I had heard from him.

Q. Had you written to him before? A. No, Sir; I had not written to him or communicated with him in any way before about it.

Q. Had he been your counsel in other matters? A. He had been a friend and adviser in the same sense as he was in this matter.

Q. He had never been your counsel? A. I never paid him a fee as a lawyer—never employed him as a lawyer.

Q. Neither you nor your firm? A. No, Sir.

Q. Had he been actively engaged with your affairs at Washington? A. No, Sir; I don't think he was actively engaged with our affairs at Washington.

Q. With your affairs at the Custom-House? A. He had been counsel for Mr. Jayne against us in that business.

Q. That was the previous relation between you and him? A. That was not the relation between him and me. I did not understand the question in that way. That was not the relation between Mr. Butler and myself.

Q. He had been counsel against you? A. He was counsel for Mr. Jayne; yes, Sir. Mr. Jayne was the special agent of the Treasury Department.

Q. He never was counsel for you? A. No, Sir; except in the sense of adviser.

Q. And his friendly advice was while he was counsel against you? A. No, Sir; there was no friendly advice when he was counsel against us.

Q. When did the friendly advice begin? A. The friendly advice was on this business between Mr. Beecher and Mr. Tilton in this controversy—personal advice to me.

Q. General Butler is a personal friend of yours, is he not? A. Yes, Sir.

Q. Was he so at the time he acted as counsel against you for Mr. Jayne? A. No, Sir; Mr. Tilton introduced me to Mr. Butler; I never knew him before that, personally, closely.

Q. He became your friend? A. He became friendly to me, certainly.

Q. Had you a controversy with the Government at that time? A. Yes, Sir; we did have.

Q. Was he instrumental in effecting an arrangement of that matter? A. Not that I ever knew of, Sir.

Q. Nor Mr. Jayne? A. Nor Mr. Jayne instrumental in effecting—?

Q. Was he instrumental in effecting it? A. We settled with the Government; we could not have settled except through Mr. Jayne.

Q. Then he was? A. Not for us; he was not instrumental.

Q. Have you known Mr. Jayne ever since that time? A. Yes, Sir.

Q. Are you and he friends also?

Mr. Beach—Wait a moment. We object to that.

Judge Neilson—I will rule it out for the present. I don't see that it is material at all.

Mr. Porter—Have you conferred with Mr. Jayne on the subject



of Mr. Beecher's affairs? A. I have not conferred with Mr. Jayne on the subject of Mr. Beecher's affairs.

Judge Neilson [to the witness]—Say no.

Q. You and he have had no conversation about it? A. Yes, Sir; we have had conversation about it.

Q. Here? A. In New York.

Q. Did you send for him with regard to it? A. No, Sir; I don't think I sent for him.

Q. Do you know whether you did or not? A. I don't think I ever sent for Mr. Jayne. I saw him at the Fifth Avenue Hotel one day.

Q. Was that the only occasion on which you conversed with him about it? A. I think I saw him at the Fifth Avenue Hotel since, and conversed with him about it, within a week, or two weeks, or three weeks, recently.

Q. Will you be good enough to repeat the date when General Butler volunteered in the matter? A. I have got the exact date I think it was June 29th or 30th, the letter I received from him.

Q. Has he since acted as your counsel through the matter? A. Yes, Sir; as my adviser in the matter: there's a distinction between "counsel" and "adviser," I believe.

Q. You said that your letter of Aug. 4th was written by his advice? A. Yes, Sir; written by him.

Q. And by him? A. Yes, Sir.

Q. Was the subsequent letter of Aug. 5th written by him? A. What was the subsequent letter of August 5th?

Q. In reply to Mr. Beecher's of August 4th, which was excluded? A. No, Sir; that was written by myself, in conjunction with Theodore Tilton.

Q. Was Mr. Tilton present when General Butler wrote the letter of August 4th? A. No, Sir.

Q. Had he been conferred with on that subject? A. No, Sir.

Q. You have at no time paid any fee to General Butler? A. I have not.

#### MOULTON'S IMPARTIALITY IMPEACHED.

Q. Nor to any counsel in connection with this litigation? A. Yes, I have. Between Mr. Tilton and Mr. Beecher?

Q. Yes, Sir? A. No, Sir; I have not paid any fee to any counsel in any litigation between Mr. Tilton and Mr. Beecher.

Q. You have paid fees to counsel who are acting for Mr. Tilton, have you not? A. I have on business of my own.

Q. Have you engaged to pay any fees in this case? A. I have not.

Q. Have you contributed to the expense of this litigation in any form, directly or indirectly? A. I don't think I have.

Q. Have you contributed to the expense of the publications which have been made from time to time in regard to it, or any of them? A. No, Sir.

Q. Or any of them? A. No, Sir; I don't think I have; I do not recall any such contribution now.

Q. Nor any payment for that purpose? A. No, Sir.

Q. You have contributed nothing? A. I have contributed nothing.

Q. Paid nothing and promised nothing? A. Paid nothing and promised nothing.

Q. All was in your branch of the litigation? A. All was what?

Q. All that you paid was in your branch of the litigation? A. Yes, Sir.

Q. In connection, I suppose, with the indictments and the civil suits?

Mr. Beach—Wait a moment.

Judge Neilson—You ought not to ask that question.

Mr. Porter—I wish to show his relation to the controversy.

Judge Neilson—I will rule it out. It is immaterial.

Mr. Evarts—Does your Honor understand it is immaterial, in regard to the witness's relation to this case, that he is under indictment, and that he is pursued in a civil suit?

Judge Neilson—It is immaterial.

Mr. Evarts—And that he has been forced to judgment in the libel suit?

Judge Neilson—All that I shall rule out.

Mr. Evarts—And that that does not bear upon the attitude of this witness in the weighing of his testimony by the Court and the Jury, your Honor understands?

Judge Neilson—No, Sir.

Mr. Beach—These proceedings are not had on the part of Mr. Beecher.

Judge Neilson—Not at all.

Mr. Evarts—We know what part they are on. I understand that your Honor says, when we offer to show the attitude of this witness under the public indictment, and in the civil suits for libels in his statements concerning this case, that that does not constitute evidence to go to his credit with the Jury for his statements in this case.

Judge Neilson—I so rule, and it has been decided more than once in this case, that the existence of an indictment don't tend to impair a witness.

Mr. Evarts—I have not said that.

Judge Neilson—I am saying it.

Mr. Evarts—I don't offer in that connection, or in the least relation to it.

Judge Neilson—I think it is immaterial.

Mr. Evarts—But it is that he is made a party defendant to the case in the same side of the controversy in which he now appears as a witness for the plaintiff here.

Judge Neilson—So made by some other person, or party.

Mr. Evarts—Well, no matter; he is in that condition.

Judge Neilson—Yes, Sir.

Mr. Evarts—Of prosecution, if you please. I don't know whether it is prosecution, or how.

Judge Neilson—I don't know.

Mr. Evarts—Nor I don't suppose we do, but that he holds that position in regard to those suits forced against him, justly or unjustly.

Judge Neilson—In regard to other parties.

Mr. Evarts—Justly or unjustly. He is indicted for a libel against Mr. Beecher in this very statement.

Judge Neilson—That would not be admissible here.

Mr. Evarts—Your Honor will so rule, of course.

Judge Neilson—Yes, Sir.

Mr. Evarts—But I wish to bring to your Honor's notice the

aspect of the matter in which it is presented. Now, anything that goes to show the animosity or the repugnance or opposition between a witness and the party against whom he is testifying, is primary evidence to show that he is not a disinterested and impartial witness, but is himself an active party in a controversy; and now we offer this witness's position in all these suits as evidence that he is not an impartial witness, but is a party to the controversy.

Judge Neilson—I am ruling on the assumption that some third person not named has had, or has some, litigation with the witness, a case in which that third person is the mover and this witness here may assume the position of a defendant, and resisting also, and more immediately connected with this, there is an indictment, upon the complaint of this defendant, against the witness in respect to this same matter, in all of which the witness stands, it would seem, upon the defensive, is not an actor, and does not appear to be aggressive, even on your own statement.

Mr. Evarts—But is not indicative of feeling against him that he had been pursued by Mr. Beecher?

Judge Neilson—That would not be sufficient to strike out the testimony.

Mr. Evarts—Does your Honor say that to show that the party against whom he is testifying here has pursued him, is not evidence that he does not stand impartial?

Judge Neilson—We have it already on record that this witness is hostile to the defendant,

Mr. Evarts—How have we that?

Judge Neilson—Avowed by himself yesterday. That fact sufficiently appears. There can be no suggestion of friendliness.

Mr. Evarts—Have we it down on the evidence?

Judge Neilson—Certainly.

Mr. Evarts—That he has said he is a hostile witness?

Judge Neilson—Not in that way; that their friendly relations ceased.

Mr. Evarts—That friendly relations ceased. That is not an avowal that he is hostile—bitterly hostile to the defendant.

Judge Neilson—Would your indictment, if put in evidence, make him appear hostile?

Mr. Evarts—That the Jury will be the judge of.

Judge Neilson—I think you must be content with an exception.

Mr. Evarts—But you say you exclude it on one ground, that it is the subject of transactions with third persons.

Judge Neilson—In part.

Mr. Evarts—On the part that has not interest with persons. How is it with third persons?

Judge Neilson—I understood from your statement that some third person had brought suit against this witness, and that he has been indicted on complaint of the defendant.

Mr. Evarts—Yes, Sir.

Judge Neilson—An indictment not yet tried.

Mr. Evarts—I don't offer the indictment as proving its truth. I offer it as a prosecution against him upon the complaint of Mr. Beecher, and as not hearing on the question.

Judge Neilson—It is very clear that if A. claims an immense estate against B, and B can pursue the principal witness and indict him in many indictments, that he don't ruin the witness whose testimony may be brought in support of the case against him.

Mr. Evarts—I have not offered it in that light.

Judge Neilson—I rule it out in such light.

Mr. Evarts—I offer it as affecting the animus of the witness, and certainly those things are quite extinguishable, if your Honor please.

Judge Neilson—I am very clear about this; I have not any doubt about it. I don't wish any general argument on it.

Mr. Evarts—I don't wish to argue it any further, but I wish to take your Honor's ruling.

Judge Neilson—Certainly.

Mr. Evarts—We offer to prove by this witness the position in which he stands in regard both to the public executions and the civil suits that have grown out since this controversy between Mr. Tilton and Mr. Beecher arose.

Judge Neilson—Other than this suit?

Mr. Evarts—Other than this suit. It is not necessary to particularize. Your Honor rules out the whole?

Judge Neilson—A. Yes, Sir.

Mr. Evarts—We except.

Mr. Morris—We have found the letter of authorization.

Mr. Evarts—Now your Honor has ruled upon the whole. I now offer each of the matters separately.

Judge Neilson—Let it be so framed.

Mr. Evarts—It is so understood. I except.

Judge Neilson—Certainly. [To the Jury.] Gentlemen, you will please now retire to your dinner and be in your seats at 2 o'clock.

Mr. Mallison—[The Clerk.] The Court will now take a recess until two o'clock.

#### RUPTURE OF BEECHER'S AND MOULTON'S FRIENDSHIP.

The Court met at 2 p. m., pursuant to adjournment. Francis D. Moulton recalled, and cross-examination resumed by Mr. Porter.

Q. You mentioned that your letter of August 5th was the one in which Gen. Butler did not assist you, and in which Mr. Tilton did. Where was that letter written? A. In my study at home, Sir.

Q. When? A. August the 5th, I think; the date of it. Is that the date? A. I don't remember.

Q. The date is August 5th, but you remember it was in reply to Mr. Beecher's of August the 4th? A. That is the letter. The letter in reply to Mr. Beecher's letter was prepared at my house—whether it bears date August 5th or not—in my study.

Q. At the time it was prepared was any one present except you and Mr. Tilton? A. I do not remember that there was any body present.

Q. Who did the writing? A. Theodore Tilton.

Q. And did you engross it? A. I don't remember whether I did or not, Sir.

Q. You do not remember whether it was in his handwriting



or yours? A. I do not remember whether it was or not; I think it was in Mr. Eddy's handwriting.

Q. How is that? A. I think it was in my accountant's handwriting.

Q. Ah, yes, a copy? A. I don't remember whether it was in my handwriting or in his.

Q. That was in reply to Mr. Beecher's letter of the previous day? A. Yes, Sir.

Mr. Everts—Is that the letter [handing witness a letter]? A. Yes, Sir; this is the letter.

Mr. Everts—We offer this letter now in evidence, if your Honor please, with the letter to which it was an answer, which I have asked them to hand me.

Mr. Morris—The one which was ruled out yesterday?

Mr. Everts—Yes, Sir. Your Honor then thought that those letters were not admissible, or were unnecessary—that clearly was the point of your Honor's ruling—because the testimony already given showed that the friendly relations between Mr. Moulton and Mr. Beecher had then been terminated by the letters of the 23rd of July; but, really, if you look at those letters it will be found that those letters do not show the termination, but it is these letters that show the termination. But it is not in that view that—

Judge Neilson—The witness stated it.

Mr. Everts—Well, he said that they were terminated, but the form and manner and precise way in which they were terminated could not be gathered from those letters, as there was nothing hostile in them; but the evidence now shows that a letter of Mr. Beecher to Mr. Moulton became the subject of consultation and conference between Mr. Moulton and Mr. Tilton, and that they then prepared this answer, which Mr. Tilton drafted and Mr. Moulton signed, and they sent it forth. It is, therefore, an act in which this plaintiff participated, and is a part of the transaction and relations between the two parties in reference to the investigation, or the suppression of investigation, as the case may be, concerning this controversy between them, which have formed, as your Honor knows, the staple of so much of the evidence that has been introduced. The letters formerly stood, in your Honor's appreciation of them, as merely letters between the witness and Mr. Beecher, bearing upon the question of whether or not they broke off their relations, and your Honor did not consider them important or useful to further prove that fact, as I understand it. Now, your Honor will see by these letters that when this comes to be the act of Mr. Tilton in withholding from Mr. Beecher access to these papers, it is an immediate and direct significance of the dealing by Mr. Tilton and Mr. Beecher in regard to this conference.

Judge Neilson—Mr. Beach, what do you think of this?

Mr. Beach—Your Honor will recollect that there was a letter introduced, addressed by Mr. Beecher to Mr. Moulton, bearing date July 24, 1874, making a request for the letters and papers in the hands of Mr. Moulton, relating to this controversy, and that the letter of Mr. Moulton, without our objection, in answer to that bearing date August 4th, was read in evidence. I believe also that the letter of July 23, 1874, from Mr. Beecher to Mr. Moulton, was also

given in evidence. Mr. Porter then proposed to read the reply of Mr. Beecher, bearing date August 4th, 1874, to which I objected, and that was ruled out upon the ground that the statements made by Mr. Beecher to Mr. Moulton upon this subject, detailing the particulars of what was supposed to be the origin of a breach of their friendship, was not admissible; that under the pretense of a controversy between himself and Mr. Beecher, Mr. Beecher could not fabricate declarations or introduce conversations between himself and the witness, which would bear upon the main issue in the controversy. I am not aware that the letter to which reference is now made, of August 5, 1874, was then presented for discussion or consideration. I am not aware that any offer was made of that letter or any objection taken to it on our behalf. The only objection which we made, and the only objection which I care now to make, is to the letter of August 4th, written by Mr. Beecher to Mr. Moulton, and if the object of the introduction of the letter of August 5th is to introduce in evidence, or to lay the foundation for a presentation in evidence, of the letter of Mr. Beecher of August 4th, why, then we object. So far as it is now offered for the purpose of proving declarations made or assented to upon the part of Mr. Tilton, in so far as those declarations are material to the issue, I perceive no objection to its introduction. It seems to me competent upon that ground; but I desire to preserve the objection which was made on the 18th, and upon which your Honor ruled, to the introduction in evidence of the letter of Mr. Beecher, of August 4th. I stated on the 18th Sir, what I supposed to be the rule of law, without any specific examination of the question, in regard to the admissibility of the details of controversies between a witness and the party against whom he is introduced, for the purpose of proving the presence of malice or ill-will. I have just sent, Sir—I have not looked at the authority furnished by the case of Boynton against Boynton, decided in the Court of Appeals, which appears in the 43rd of New York, at page 380:

“In an action of slander, the plaintiff, as a witness on his own behalf, stated, on cross-examination, that he had had litigation with the defendant. He was then asked how many suits he had with him, and for what cause of action. Held, that the Court below properly excluded so much of the inquiry as related to the causes of action; it was in no way material or pertinent to the issue. Its materiality consisted solely in its bearing upon the credit due to the plaintiff as a witness, and was therefore collateral in its nature. The end of such an inquiry would result in an unlimited examination of the previous litigation, and in attempts to indicate the different positions occupied by the parties engaged in it.”

The authority seems to me, Sir, particularly applicable to the present question. Here the difficulties which are supposed to exist, causing estrangement and ill feeling between the witness and Mr. Beecher, were connected with the very subject of litigation in this action; and if, in a controversy between the witness and Mr. Beecher, Mr. Beecher is permitted to make declarations which are material to the main issue, which directly affect the interests of Mr. Tilton in this litigation, why, your Honor will perceive that by that mode of inquiry upon a collateral question Mr. Beecher is permitted

to introduce his own declarations to a third party against us when we were not present. If necessary, Sir, if you will permit me, I will look a moment to the opinion, which may be fuller than the marginal notes. The opinion says, Sir :

"The evidence proposed to be given by the answer to so much of the question as was excluded, was in no way material or pertinent to the issue found between the parties, and which formed the subject of the trial. Its materiality consisted solely in its bearing upon the credit due to the plaintiff, as a witness, and was, therefore, collateral in its nature. Inquiries of this character must necessarily be limited and restricted in their nature, otherwise the trial of issues upon pleadings would be often so far extended by them as to obscure the real point involved in the controversy, and obscure the mind of the jurors called upon to decide them. The object of such inquiries is to show that the witness may be giving his testimony under some feeling or impulse, inconsistent with an impartial disclosure of the truth. It is not material to inquire after the particular process or the detail of circumstances by means of which that feeling may have been produced, for the fact itself is all that the case can require to be proved, and all that the law will permit to be shown. The discovery of the motive under which the witness may, at the time, be giving his evidence, is the end and object to be attained, and that can always be accomplished by the direct inquiry concerning its existence or concerning the facts themselves ordinarily indicating the existence of improper motives. It is sufficient to show that the difficulty affecting his feelings and likely to influence his evidence, exists between the witness and the party it may be given against, and that can always be done without pursuing a detailed inquiry into the circumstances attending its development."

That authority, Sir, very abundantly sustains the proposition which I submitted to your Honor on the 18th, and which will be at once recognized as law. Now, it may be said, Sir, that this letter of Mr. Beecher, of August 4th, necessarily came under the observation of Mr. Tilton, at the time he was engaged mutually with Mr. Moulton in preparing the reply to that instrument. It will be for your Honor's consideration how far the presentation of that letter to Mr. Tilton—if it was submitted to him, which does not yet appear—and how far his acceptance or repudiation of the statements of that letter may be admissible. Certainly, sufficient yet has not been given to allow the production of that letter under that aspect of the question.

Mr. Evarts—This letter, as I understand it, is not objected to?

Judge Neilson—The letter written jointly?

Mr. Evarts—Yes, Sir.

Mr. Beach—I object to that letter, Sir, or any part of that letter which in your Honor's opinion—if you will be kind enough to scrutinize it—will lay any foundation for the introduction of Mr. Beecher's letter.

Judge Neilson—So I understand, Sir.

Mr. Evarts—May I read the letter?

Judge Neilson—You are at liberty to read the letter which was written jointly.

## THE FIRST HOSTILE WORDS BETWEEN THE FRIENDS.

Mr. Evarts—[reading]:

49 REMSEN STREET, BROOKLYN, August 5, 1874.

Rev. HENRY WARD BEECHER:

MY DEAR SIR: In all our acquaintance and friendship I have never received from you a letter of the tone of yours of August 4th. It seems unlike yourself, and to have been inspired by the same ill-advisers who had so lamentably carried your private affairs before a committee of your church, and thence before the public.

In reply, let me remind you that during the whole of the past four years all the documents, notes and memoranda which you and Mr. Tilton have intrusted to me to have been so intrusted because they had a reference to your mutual differences. I hold no papers, either of yours or his, except such as bear on this case. You speak of "memoranda of affairs not immediately connected with Mr. Tilton's matter." You probably allude here to the memoranda of your difficulties with Mr. Bowen, but these have a direct reference to your present case with Mr. Tilton, and were deposited with me by you because of such reference. You speak also of a letter or two from your brother and sister, and I am sure you have not forgotten the apprehension which we entertained, lest Mrs. Hooker should fulfill a design which she foreshadowed, to invade your pulpit and read to your congregation a confession of your intimacy with Mrs. Tilton.

You speak of other papers which I hold "subject to your wishes." I hold none such, nor do I hold any subject to Mr. Tilton's wishes. The papers which I hold, both yours and his, were not given to me to be subject to the wishes of either of the parties. But the very object of my holding them has been, and still is, to prevent the wish of one party from being injuriously exercised against the other.

You are incorrect in saying that Mr. Tilton has had access to my "depository of materials;" on the contrary, I have refused Mr. Tilton such access.

During the preparation of his sworn statement he came to me and said his case would be incomplete unless I permitted him the use of all the documents, but I refused; and all he could rely upon were such notes as he had made from time to time from writings of yours, which you had written to me to be read to him, and passages of which he caught from my lips in short hand. Mr. Tilton has seen only a part of the papers in my possession, and would be more surprised to learn the entire facts of the case than you can possibly be.

What idle rumors may have existed in newspaper offices I know not; but they have not come from me.

In closing your letter you say, "I do not ask you to place before the Committee any papers which Mr. Tilton may have given you; but I do demand that you forthwith place before the Committee every paper which I have written or deposited with you." In reply I can only say that I cannot justly place before the Committee the papers of one of the parties without doing the same with the papers of the other, and I cannot do this honorably except either by legal process compelling me or else by consent in writing, not only of yourself but of Mr. Tilton, with whom I shall confer on the subject as speedily as possible.

You will, I trust, see a greater spirit of justice in this reply than you have infused into your unusual letter of August 4th.

Very respectfully,

FRANCIS D. MOULTON.

[Marked "Exhibit D 6."]

Mr. Evarts—Now, we offer the letter to which that is an answer, it having been communicated to Mr. Tilton, read by him, and quoted from by him as parts of his (Mr. Tilton's) written reply, to be signed by Moulton.

Mr. Beach—That statement may probably be assumed to be



true, Sir, from what has already appeared; but still it is not evidence, and I think it should appear by the direct examination of the witness before we withdraw our objection to its introduction. Whether the contents were brought to his observation—submitted to him—I don't know. It will be easy to prove it if it is a fact.

Judge Neilson—Suppose you interrogate him upon that subject.

Mr. Evarts—I dare say, your Honor, that it is proper that it should be done, but I make this suggestion: as there is no pretense that there was any other letter of the 4th of August from Mr. Beecher, and as this letter which I have read, every word of which was written by Mr. Tilton, is in answer in terms referring to the date of Mr. Beecher's letter—his unusual letter—and making three separate quotations from it, on every principle of evidence that has ever been practiced upon in a civil or criminal suit, the writer of an answer to a letter is affected with a knowledge of the letter which he is answering. Now, I submit to your Honor that it is but an idle form to proceed any further.

Mr. Beach—That would be true, Sir, if the letter to which the reply is made was addressed to the party making the reply, or if the whole of the letter had been quoted in the reply. Here are two parties engaged in preparing this answer. It does not appear that Mr. Tilton wrote the whole of the answer, or that he did not write portions of it at the dictation of Mr. Moulton. It does not appear, but the quotations in the answer were given by Mr. Moulton to Mr. Tilton to be incorporated in it; and it is those, perhaps somewhat technical matters, which, I insist, ought to appear before the whole of Mr. Beecher's letter is permitted to be read.

Judge Neilson—I think it is proper to interrogate the witness upon that subject.

Mr. Evarts—Does your Honor rule that this letter is not admissible without an interrogation?

Judge Neilson—I expressed a wish, Sir, that he should be asked that question.

By Mr. Porter—Did Mr. Tilton see the letter from which he quoted these passages in the reply? A. I think he did, Sir.

Mr. Beach—Wait one moment, Sir. I object to that question as assuming that Mr. Tilton quoted these passages in the reply.

Q. Did Mr. Tilton quote these passages in the reply? A. They were quoted in the reply which was made by Mr. Tilton and myself. The reply was jointly Mr. Tilton's and my own.

Q. And the letter was before you from which the extracts were taken? A. Yes, Sir.

Q. And the reply to the letter was made with reference to the letter to which it was a reply? A. Yes, Sir.

Q. By you and by Mr. Tilton? A. By Mr. Tilton and myself.

Judge Neilson—Now, I think the letter may come in.

Mr. Beach—Yes, Sir; I think it is competent.

Mr. Evarts—Have you the original?

Mr. Morris—I cannot find it. You may read from the copy.

Mr. Evarts—We will read it, but still we want to see all these original papers.

Mr. Morris—I will find it at my leisure.

Mr. Evarts—We have not seen these papers. The other aids have seen them all. I would like to see them.

Mr. Morris—All the papers that we have we will furnish.

Mr. Beach—You saw this one—your own letter, I suppose.

Mr. Morris—They have served a subpoena upon us, and I have requested them to make a list of the papers that they want, and I give them notice again, or they will have to wait until we can find it.

Judge Neilson—I think it will be well, Mr. Shearman, to make a list.

Mr. Porter—(Reading):—

BROOKLYN, Aug. 4, 1874.

F. D. MOULTON, Esq.

Sir: Your letter, bearing date Aug. 4, 1874, is this moment received. Allow me to express my regret and astonishment that you refuse me permission even to see certain letters and papers in your possession, relating to the charges made against me by Theodore Tilton, and at the reasons given for the refusal.

On your solemn and repeated assurances of personal friendship, and in the unquestioning confidence with which you inspired me of your honor and fidelity, I placed in your hands for safe-keeping, various letters addressed to me from my brother, my sister, and various other parties; also, memoranda of affairs not immediately connected with Mr. Tilton's matters. I also, from time to time, addressed you confidential notes, relating to my own self, as one friend would write to another. These papers were never placed in your hands to be held for two parties, nor to be used in any way. They were to be held for me. I did not wish them to be subject to risk of loss or scattering, from my careless habits in the manner of preserving documents. They were to be held for me. In so far as these papers were concerned, you were only a friendly trustee, holding papers subject to my wishes.

Mr. Tilton has made a deadly assault upon me, and has used letters and fragments of letters, purporting to be copies of these papers. Are these extracts genuine? Are they garbled? What are their dates? What, if anything, has been left out, and what put in?

You refuse my demand for these papers on the various pleas that if I speak the truth in my statement, I do not need them; that if I make a successful use of them it will be an injury to Mr. Tilton, and that you, as a friend of both parties, are bound not to aid either in any act that shall injure the other.

But I do not desire to injure any one, but to repel an injury attempted upon me by the use of papers committed sacredly to your care. Those documents have been seen and copied; they have been hawked for sale in New York newspaper offices; what purport to be my confidential notes to you are on the market. But when I demand a sight of the originals of papers of which you are only a trustee, that I may defend myself, you refuse, because you are the friend of both parties!

Mr. Tilton has access to your depository for materials with which to strike me, but I am not permitted to use them in defending myself!

I do not ask you to place before the Committee any papers which Mr. Tilton may have given you. But I do demand that you forthwith place before the Committee every paper which I have written or deposited with you.

Yours truly,  
[Marked "Exhibit D. 7."]

H. W. BEECHER.

TILTON'S ACCOUNT WITH MOULTON'S FIRM.

Mr. Porter—Have you the account, Mr. Moulton?

A. Yes, Sir. Which one, Sir?

Q. Both, if you please. A. There is the first one—Mr. Tilton's—and there is the other [producing papers].

Q. This is a transcript of the account of your firm with Theodore Tilton? A. Yes, Sir.

Q. It is a correct transcript of that account, and of the whole of it? A. I believe it to be so, Sir; our accountant made it.

Mr. Porter—I will introduce in evidence first the account of Theodore Tilton with Woodruff & Robinson. I will ask Mr. Hill to read it.

Mr. Hill [reading].

THEO. TILTON in acct. with WOODRUFF & ROBINSON.

[DEBIT.]		
1871.		
Feb.	3—To Cash.....	\$500 00
	13—do .....	500 00
	24—do .....	500 00
Mar.	4—do .....	500 00
	8—do .....	1,500 00
May	1—do .....	500 00
Nov.	15—do .....	1,113 62
	25—do .....	250 00
1872.		
Jan.	29—do .....	1,000 00
Apl.	26—do .....	15 00
May	27—do .....	100 00
	27—do .....	100 00
	27—do .....	500 00
June	8—do .....	500 00
	11—F. Woodruff guard int. on B. & M.....	240 63
July	8—Cash.....	250 00
Aug	12—do .....	1,200 00
	22—do .....	300 00
Sept.	1—do .....	1,813 91
Nov.	8—F. Woodruff guard. int. on B. & M.....	297 50
	8—Cash.....	500 00
Dec.	27—do .....	600 00
1873.		
Apl.	21—do .....	170 48
		\$12,981 15
[CREDIT.]		
1871.		
Jan.	7—By Cash.....	\$4,004 03
May	1—By bal. Interest on acc't.....	45 21
Nov.	13—By Cash.....	500 00
Nov.	29—do .....	250 00
1872.		
Jan.	24—do .....	1,000 00
Apl.	5—do .....	7,000 00
May	28—do .....	100 00
Nov.	8—By bal. Interest on acc't.....	71 26
Apl.	21—do .....	10 65
		\$12,981 15

Mr. Fullerton—Balancing the account?

Mr. Hill—They balance.

MOULTON'S STEWARDSHIP.

Q. The other paper which you produce purports to be a statement of receipts and disbursements of money received from H. W. Beecher by F. D. Moulton; is this a correct statement of those? A. It is a correct statement, Sir, as far as our books are concerned; I think that there are one or two checks left out; I cannot say that there are, but my impression—not checks, but currency; currency; I think there were two payments to me in currency besides that account.

Mr. Porter—This I offer in evidence.

(Marked "D, No. 9.")

Mr. Hill [reading]—This is a statement of moneys received and disbursed from H. W. Beecher by F. D. Moulton;

On the Debit Side.		
1872.		
July	19—Paid Rev. C. C. Beatty, check.....	\$153 27
Aug.	19— " Mrs. Theo. Tilton " .....	150 00
1872.		
Jan.	19— " " .....	245 00
May	28— " Rev. A. M. Read, check.....	219 78
	28— " Mrs. T. Tilton .....	25 00
July	8— " Rev. A. M. Read.....	118 12
Oct.	24—Paid Mrs. T. Tilton.....	50 00
1873.		
Mar.	7— " Rev. C. C. Beatty, check.....	245 00
April	5— " Mrs. T. Tilton, bal'ce of \$500.....	255 00
May	3— " Theo. Tilton, check.....	1,000 00
July	11— " Tilton, indorsed by W. Ruland, attorney, check.....	650 00
Aug.	15—Paid to Theo. Tilton, check.....	250 00
Sept.	12— " " " .....	500 00
	30— " " " .....	500 00
Dec.	9— " " " .....	250 00
	16— " A. M. Read, check.....	200 00
1874.		
Feb.	24— " Theodore Tilton, Mrs. T. T., cashed for check.....	500 00
M'ch	30—Paid Theodore Tilton, O. W. Ruland, check.....	\$400 00
May	2—Paid Theodore Tilton, indorsed <i>Golden Age</i> , by O. W. Ruland, attorney.....	250 00
	" 26—Paid Theodore Tilton, check.....	300 00
Footings, in pencil .....		\$6,078 15

The Credit Side.		
1871.		
June	26—Received check, H. W. Beecher.....	\$153 85
Nov.	14— " " of .....	150 00
1872.		
May	31— " " " .....	294 78
1873.		
Feb.	19— " " " .....	500 00
May	2— " cash.....	5,000 00
In pencil, footing.....		\$6,100 61

Mr. Beach (smiling)—So it seems Mr. Beecher has a balance there yet?

Mr. Porter—From what is this statement taken—I refer to the one last introduced in evidence? A. From the ledger of Woodruff & Robinson.

Q. The entries were made at the time of the respective dates in the books of your firm? A. Yes, Sir.

Q. Is the title of the account in the book that which appears in the paper? A. What is the title there, Sir: I don't—

Q. "Statement of accounts," etc.? A. No, Sir; it is taken from my account on the ledger, "Francis D. Moulton," I judge—from my account; from my own individual account, Sir.

Q. Could you bring the book and explain, or will it be necessary? A. The accountant will come, Sir, or the books.

Q. If you will do that, be kind enough to do so to-morrow; it will take less time to explain. A. Have the accountant or the books, Sir? You need the cash book and the ledger, then—you will need several cash books—cash books and the ledger.

Mr. Porter—Oh! I guess we won't want anything but the ledger: just the ledger, in order to show how it appeared.

Mr. Beach—I understand the witness to say that this is extracted from his account with the firm. I understand that; but we would like to see how it entered into his account. It is only a matter of explanation; it is much more simply done by having the book here than it is by taking the pen and—

The Witness—I can't tell you exactly how it—

Mr. Porter—How does it happen that all the sums which were received from Mr. Beecher don't appear? A. My impression is, Sir, that I received some currency from him that I immediately paid out, and which I did not deposit there and draw from.

Mr. Beach—That you did not deposit? A. That I did not deposit.



Mr. Porter—There were several instances of that kind? A. I don't know that there were several; I think there were one or two; I won't be certain about it.

Q. Have you any means of ascertaining the amounts? A. No, Sir; nothing but an impression that I have.

Q. Have you kept no memorandum? A. No, Sir; that is the memorandum as far as I have any, Sir; I have no other.

Q. This, then, is not in your books a continuous account in respect to the five thousand dollars, as well as the other matters which you say were an account of these? A. It is not in what?

Q. It is not a continuous and intermingled account? A. It is an intermingled account; yes, Sir. As I received the checks, I had the money deposited to my credit. The dates there will show. The dates and the checks will show when the amounts are placed to my credit.

By Judge Neilson—I understand there were these intermediate deposits in other matters? A. Yes, Sir; there might have been.

Judge Porter—If the books were kept as an account between you and the firm, how was it indicated that the transactions related to Mr. Beecher? A. A memorandum was put down there, Sir.

Q. And is that memorandum transcribed in full? A. I presume it is, Sir.

Mr. Beach—Oh! no; I guess not.

The Witness—I received the account with a letter from Mr. Eddy, our accountant, stating that he had taken off the account; I have not examined it.

Q. If you would be kind enough to look at it between now and to-morrow—you have one copy of this, I suppose? A. No, Sir; I have not.

Q. I thought Mr. Tilton had one in pencil? A. Mr. Tilton has one, in pencil, of his own; this is another matter; Mr. Tilton has a memorandum of the account with me.

Mr. Beach—This cannot be an account from the book. For instance, the first charge, "Paid by Rev. C. C. Beatty, check —"

Mr. Evarts—We shall have to have the books; we need not detain them.

Mr. Beach—There is nothing here to show that the checks which you paid to Beatty, or to the Rev. Mr. Read, were on behalf of Mr. Beecher? A. Yes, Sir; you will find corresponding amounts to the credit of the account there—to my credit; the checks that I paid were paid to C. C.—

Q. What is there on the books to show that the checks paid to the Rev. Mr. Beatty or Mr. Read, were paid on behalf of Mr. Beecher, or out of the Beecher account? A. What was there on the book to show that?

Mr. Porter—Yes.

The Witness—There's no other money for it to come from but Mr. Beecher's money. That account was paid from no other money but the money that Mr. Beecher gave me.

Mr. Evarts—The books do not show that.

The Witness—The books show, I think, that the entry on the book is, "Paid C. C. Beatty." Now, then, what is—

Mr. Evarts—But, what is there on the books to show that

that is from Mr. Beecher? A. The credit on the book to me is a check from Mr. Beecher, Sir; you will find it on the credit account.

Q. Corresponding in amount? A. Yes, Sir; corresponding in amount.

Q. In that way? A. Yes, Sir; if you will allow me, Mr. Porter, I will try and indicate what I mean from the paper itself. For instance, to my credit there is placed a check June 26th, \$155 85; paid Rev. C. C. Beatty, \$155 27. Then there is received a check from H. W. Beecher, \$150; paid Mrs. Theodore Tilton, \$150. Then there is paid Mrs. Theodore Tilton, \$50; paid Rev. A. M. Read, \$219 76; paid Mrs. Theodore Tilton \$25, and received from Mr. Beecher \$294 76 to offset that. Then there is received different sums credited to me \$500, and that is paid to C. C. Beatty \$245, and to Mrs. Theodore Tilton \$255, which offsets that \$500, and the account balances. Then you come to the \$5,000; paid Theodore Tilton, May 3d, \$1,000 on that; July 11th, \$650, paid Theodore Tilton, "indorsed O. W. Ruland, attorney," \$650—and August 15th paid \$350—all that comes out of the \$5,000. Then \$500, \$260; A. M. Read, \$200; Theodore Tilton, cash for Mrs. T., \$500; Theodore Tilton, indorsed by Ruland, \$400, and so on down, so that it leaves a balance in Mr. Beecher's favor here of—I don't know how much it was, Sir, to balance.

Mr. Beach—\$22? A. \$22.

Mr. Porter—Is there in the accounts of your firm, in any part, anything to show the transactions between you and Mr. Tilton not embraced in these two papers? A. Between myself personally and Mr. Tilton? No, Sir.

Q. If I understand you there was no account between your firm and Mr. Beecher? A. No, Sir.

Q. At any time? A. No, Sir.

Q. Nor between you and Mr. Beecher on the books of the firm? A. No, Sir.

Mr. Beach—Yes, Sir; but not in Mr. Beecher's name? A. Not in Mr. Beecher's name.

Mr. Porter—Well, there is this which is in his own name. The occasion for its appearing upon the books of the firm arose only when the moneys you received were deposited by you with the firm? A. Yes, Sir.

Q. And when the moneys paid out were paid by checks of the firm? A. Yes, Sir; or by currency of the firm.

Q. Or by currency? A. Or by currency.

Q. Of the firm? A. Yes, Sir.

Q. Where they were paid out of the currency from Mr. Beecher, they did not appear in the books of the firm—where you made a payment from funds received from Mr. Beecher which had not gone to the firm, there is no entry anywhere with regard to them? A. No, Sir; when I received currency—let me see if I understand your question by my answer, Sir—if I received currency from Mr. Beecher and paid it out immediately and did not deposit it with the firm, then there would be no account of it.

Q. So that there is no complete account in existence, so far as you are aware? A. Unless that be a complete account.

Q. And this, you think, is incomplete? A. I stated, Sir, that

there is an impression in my mind that I received from Mr. Beecher twice money that is not there.

Q. Are you able to say that you did not do so three times? A. Oh! if I should undertake to state the truth I should state it in that way that I did not three times.

Q. Well, are you able to? You put it hypothetically? A. Yes, Sir; I should say that I had not three times.

Q. Can you state the amounts on those two occasions? A. I cannot, Sir. I think on one of the occasions there was \$300—no, Sir.

Q. And the other a larger or less sum, should you think? A. I should think it was much about the same; perhaps \$500; and I think there was one of \$500.

Q. Making the total amount received from Mr. Beecher \$6,878 15? A. Whatever makes the total amount, Sir.

Q. \$6,900. I will now ask you a few questions in regard to the other account, returning to this at a later stage of the examination. You received from Mr. Tilton, I perceive by this account, on the 7th of January, 1871, \$4,000?

Mr. Fullerton—That is the other account.

Mr. Porter—Yes, Sir, \$4,004 03. [To the witness]: The first draft made upon that was on the 23d of February, \$500; did the \$5,000 received from Mr. Beecher enter into this account in any form? A. I don't think it did, Sir; if you will allow me, I will see whether it did or not on that paper.

Q. I assume it did not. A. I don't think it is in there, Sir; it is not there.

Q. Do you know how Mr. Tilton had before transacted his financial matters, whether with banks or bankers? A. I think he had money in bank and money with individuals.

Q. But never with your firm until then? A. No, Sir.

Q. How was this \$4,000 deposited? A. It was money which Mr. Tilton gave to me to be deposited.

Q. Was it in currency or in checks? A. I think very likely it was in checks, Sir; I don't remember.

Q. On the 5th of April, I observe, there was a deposit with your firm of \$7,000; do you remember whether that was by check or in currency? A. Mr. Henry C. Bowen's check; it was either Henry C. Bowen's check or currency drawn on Henry C. Bowen's check and deposited.

#### CURIOUS WAY OF STARTING A PAPER.

Q. When was *The Golden Age* established? A. In March, I think, Sir, of 1871.

Q. Who was the proprietor and editor of that paper? A. Mr. Tilton was the editor of the paper.

Q. Was he publisher? A. He was the publisher.

Q. The proprietor? A. Well, the proprietor—I hardly know how to answer that question; Mr. Tilton's notes were given, payable, if the paper was made a success, to the parties who contributed to the paper; I suppose he might be called the proprietor of the paper.

Q. Were you one of those who gave notes for that purpose? A. Yes, Sir.

Q. Or received his note, I should say, for that purpose? A. Yes, Sir, I received his note.

Q. To what extent were you a contributor? A. I think I contributed \$1,500 at that time; subscribed \$3,000.

Q. How is that, Sir? A. I subscribed \$3,000.

Q. You paid \$1,500? A. Yes, Sir; \$1,500 was paid at that time.

Q. When did you subscribe? A. I don't remember the date—in the beginning, when subscriptions were made.

Q. Probably shortly before the paper began; before the publication of the paper? A. I should think it was; yes, Sir.

Q. When did you pay that \$1,500? A. I don't remember, Sir, when I paid it; I haven't any means of stating just now; I will find out for you, Sir.

Q. The books show? A. Yes, Sir; the books—

Q. You have no idea about the time? A. No; I haven't.

Q. Nor whether it was that year? A. Oh! it was that year.

Q. Have you an idea whether it was that Spring? A. I think it was.

Q. Paid it in cash? A. Yes, Sir.

Q. You received from Mr. Tilton a note for the amount? A. Subsequently; yes, Sir, which I returned to him.

Q. When did you receive it? A. When did I receive the note?

Q. When did you receive it? A. I cannot tell the date of it, Sir; I have no means of telling just now.

Q. The note came immediately after you had sent the amount I suppose? A. The notes were arranged by my partner, Mr. Woodruff, Sir; I don't know when they came; they were arranged for me as for all the rest, as for himself.

Q. Was the other \$1,500 ever paid? A. I think not, Sir; we gave back the notes to Mr. Tilton, and made the whole thing a gift, so that he became the sole proprietor of *The Golden Age*.

Q. That was after he had published the *Life of Victoria Woodhull*? A. I think it was; I would not be certain about that, though.

Q. You will not? A. No, Sir.

Mr. Fullerton—Well, it does not appear that he published the *Life of Victoria Woodhull* at all yet. If you want to prove that you must prove it in some other way.

Q. What interval do you think occurred between the receipt of those notes and their surrender? A. I think that the notes were surrendered the latter part of the year. I think I can ascertain positively, though, for you.

Q. Of the year 1871? A. Yes, Sir.

Q. Were they surrendered at the same time with the notes of other contributors? A. I believe they were.

Q. What was the aggregate of the contribution? A. I do not remember what the aggregate was.

Q. About how much?

Mr. Beach—I don't perceive the materiality of this inquiry, if your Honor please.

Mr. Porter—Its materiality will appear hereafter.

Mr. Beach—Well, wait one moment. The gentlemen say they will make it material. It should be shown to be material now. How much Mr. Tilton was aided in the business enterprise of



publishing *The Golden Age*, by his friends, does not seem to me to be material.

Mr. Evarts—Not of itself, it is not, but it is a necessary part of material evidence.

Judge Neilson—I think the counsel has that subject about exhausted; perhaps he had better finish it.

Mr. Porter—Just that point; it is all I desire. A. About \$6,000 I should think.

Q. Of the whole? A. About \$6,000; yes, Sir.

Q. If I understand you, these were payable only in case it should be proved a success? A. I think—

Mr. Beach—One moment.

Mr. Porter—Did it prove a success?

Judge Neilson—He said that.

Mr. Porter—I wanted to see if it was a success.

Mr. Beach—You wanted to see whether you understood his answer by putting another question.

Mr. Porter—Well, I put that now. [To the Witness]: Did it prove a success?

Judge Neilson—I think he may answer that.

Mr. Porter—Did the paper prove a success? A. The paper was carried on. I don't know whether you call it a success or not; it didn't—the payment back—the giving back of these notes was not in accordance with the provision; it was in accordance with the idea of my partner, Mr. Woodruff, that Mr. Tilton had better be the sole proprietor, and instead of running it upon obligation any longer than the amount he had already incurred, that he had better undertake to run the paper on what he had, and own it himself, so that the property was given—that the money was given outright to him; that is the—

Q. The further obligation of the subscription was given up? A. Yes, Sir.

Q. Did any other members of your firm separately contribute? A. Yes, Sir.

Mr. Fullerton—Well, we object to that, if the Court please.

Judge Neilson—He has answered it.

Mr. Porter—Well, we waive that, Sir.

To the Witness—Did you lend anything to him individually?

A. I have from time to time let him have money; yes, I think.

Q. Is there an account of it in the books? A. No, Sir.

Q. Is there an account of it in writing, anywhere? A. No, Sir; I don't think there is; when I found he wanted money, I let him have money if I had it.

Q. In currency? A. Sometimes, and sometimes in checks; generally in currency.

Q. Sometimes in checks? A. I don't remember that I—I don't remember whether—I suppose very likely there is some in checks; that is, may be.

Q. Have you those checks? A. I should suppose I ought to have them. Yes, Sir, they will be in the concern; if I paid him any money in checks, they would appear.

Q. I ask you to look for that. A. I will.

Mr. Fullerton—That we shall object to. We shall object to that.

Mr. Morrison—The checks for 30 or 40 millions of money; it would take about four months.

Mr. Beach—If he chooses to look for you, of course we shall not object to it.

Mr. Fullerton—But we shall object to the evidence if the checks are produced.

Judge Neilson—Well, as matter of courtesy, the witness may look.

Mr. Fullerton—Well, to go into the details of their transaction here, seems to me to be out of place entirely.

By Mr. Porter—Have all those loans been repaid? A. No, Sir.

Q. Have any of them? A. No, Sir.

Q. During what period were they made? A. From 1871 down.

Q. To what period; down to the present time? A. Yes, Sir; down to the present time; not very much lately.

Q. How much in the aggregate? A. I really could not tell you, Sir.

Q. Have you no idea? A. No, Sir; I have not.

Q. Not within a few thousand dollars? A. No, Sir; they don't amount to a few thousand dollars; they don't amount to over a few thousand dollars; I should not think, in all, over \$2,000; I don't think.

Q. You can say that they didn't amount to over \$10,000? A. I know they didn't amount to over \$10,000.

Q. Nor over five? A. Nor over five.

Q. Have you indorsed for him? A. No, Sir.

Q. Nor become responsible for him? A. No, Sir.

Q. At the time this \$5,000 was paid by Mr. Beecher, can you tell what was the amount that Mr. Tilton owed to your firm? A. What was the amount that Mr. Tilton owed to our firm?

Q. Yes, Sir. A. I don't think he owed anything to our firm.

Q. Can you tell what was the amount he owed to you? A. I cannot.

Q. Nor approximately? A. No.

Q. I now refer to the subject of your relations with those parties briefly—did Mr. Tilton draw checks on your firm? A. Draw checks; no.

Q. Did Mr. Tilton draw checks on your firm? A. No; I think he came down for the money when he wanted it, or else drew a draft. I don't know precisely how he did draw it out.

Q. Drew a draft? A. I think very likely; or came himself for our check.

Q. Will you be kind enough to see how that was, if these are the drafts?

Mr. Beach—I think you had better give him a memorandum of what you want, or let him take it, for he certainly wont remember all those requests.

Mr. Porter—I come now to the incidents of the evening of December the 30th; had you seen Mr. Tilton that day, previous to your interview with him in the evening? A. My impression is that I had not, Sir.

Q. He came to your house? A. Yes, Sir.

Q. At his request you went to the house of Mr. Beecher? A. I did, Sir.

Q. On your arrival there, did you meet Mr. Beecher at the door? A. I don't remember that I met him at the door.

Q. Did you, when you met him, meet him in a kindly spirit?

A. I saluted him, Sir, as one gentleman should another.

Q. How is that? A. I saluted him as one gentleman should another, at the time, in his own house.

Q. Were you peremptory in your manner? A. I told him Mr. Tilton wanted him to come to my house.

Q. I ask if you were peremptory in your manner? A. I was polite, Sir, in my manner. I don't—

Q. Will you repeat the first words you used after greeting him? A. I said, "Mr. Beecher, Mr. Tilton wants you to come down to my house."

Q. What else? A. And he said then, that it was prayer meeting night and he didn't think he could come, and I then said: "Mr. Tilton wants to see you with regard to your relations with his family, and with regard to the letter which he sent to you through Mr. Bowen, and you had better make arrangements to let the prayer meeting go and come down with me."

Q. You had heard of that letter before? A. What letter; the letter of—

Q. Bowen? A. Yes, Sir.

Q. From whom? A. From Mr. Tilton.

Q. When? A. December 26th.

Q. Where? A. At Mr. Tilton's house.

Q. Did Mr. Tilton come to see you about it, or did you go to see him about it? A. About that letter?

Q. Yes, sir? A. No, Sir.

Q. Did he send for you? A. No, Sir.

#### MOULTON'S FIRST CONNECTION WITH THE SCANDAL.

Q. You were there casually? A. I think I was there casually; yes, Sir.

Q. He showed you the draft of that letter? A. He told me that he had sent a letter; he didn't show me a draft of a letter; told me what it was: what the substance of it was.

Q. What was said about it by Mr. Tilton. He said that he had written—that Bowen had told—him of Mr. Beecher's adulteries, and he had told Mr. Bowen that Mr. Beecher had been guilty of unhandsome advances toward his wife, and that had Mr. Bowen's challenge; he had written such a letter, and he told me what the letter was.

Q. Did he tell you no more particularly what adulteries Mr. Bowen had charged upon Mr. Beecher? A. I think he told me that Mr. Bowen had charged various adulteries upon Mr. Beecher, and that Mr. Beecher had made confession to him of adulteries.

By Mr. Evarts—That is, Mr. Bowen said so? A. Yes; Mr. Bowen said so.

By Mr. Porter—Did he specify those adulteries? A. No; he did not specify them.

Q. Did he specify any of the parties who were connected with those charges? A. No, Sir.

Q. Well, what did you say to that? A. I asked him if Mr. Bowen had signed the letter with him. I asked him what unhandsome advances Mr. Beecher had made. He told me not to ask him,

he didn't want to tell me. Well, I said, "Why did you send the letter through Bowen; if he was a party to that demand, why didn't you get his signature." I told him he was a fool for sending such a letter without the signature of Mr. Bowen.

Q. Was that your conversation: that he was a fool for sending it? A. Yes, Sir; without Bowen's signature.

Q. Go on. A. And he said that Mr. Bowen had promised to furnish him the evidences.

Q. On that occasion? A. No, Sir; whenever it was necessary to enforce the demand of the letter.

Q. He did then; he told you that Mr. Bowen in that interview had promised to furnish him with the evidences? A. Yes, Sir; he gave that to me as an excuse for not having had Mr. Bowen's signature when I—that is it.

Q. All that occurred at the interview? A. And I took a memorandum of what he told me. I believe the memorandum was published in my statement concerning—

Mr. Fullerton—Never mind that statement.

The Witness—Pardon me.

Q. Was that the day on which you noted the precise hour of your entering upon—of your becoming connected with this controversy? A. I noted the precise hour at which Mr. Tilton gave me the information that he gave me at that interview.

Q. What did you note it in? A. Put it on a piece of paper.

Q. Have you that paper? A. It is here.

Q. Was it a detached slip of paper? A. I don't remember; the paper will show for itself; I wrote it down.

Q. Have you it here? A. Yes, Sir; it is amongst my papers I think.

Mr. Porter—I ask for that paper.

Mr. Beach—Well, you are not entitled to see it unless you want it for evidence.

Mr. Evarts—We have a right to see it to determine whether we want it for evidence.

Mr. Beach—I submit not.

Mr. Evarts—Well, go on.

Mr. Beach—Yes; it is here.

Mr. Porter—Is it at hand?

Mr. Morris—It may take me half an hour to look through here. Unless it is for some purpose I don't propose to do it; I don't wish to.

Judge Neilson—Mr. Morris desires that a memorandum should be made of the particular dates of the documents desired, so as to look for them.

Mr. Beach—No, this presents another question. If they call for this paper as evidence, why that is one thing, and if they merely want it from curiosity to look at it, that is quite another, and we shall not furnish it.

Mr. Evarts—We shall not raise the question until the paper is here.

Mr. Beach—Well, the paper is here, and when you call for it as evidence we will look for it; and if not, we shall not.

Judge Neilson—Well, I think if you would give a memorandum of the dates of the papers to be produced it would save time.

Mr. Beach—It won't save any time, it is likely.



Mr. Fullerton—Well, all suggestion upon that subject has been wasted so far.

Judge Neilson—What could be done if the paper were brought here is quite another thing.

Mr. Fullerton—Well, the rule of evidence is very clear. If they call for it it comes.

Mr. Evarts—It would seem to be very clear from the witness that he made a memorandum at the time; that we have a right to look at it for the purpose of testing his evidence, if nothing else.

Judge Neilson—I don't need to pass upon that now.

Mr. Evarts—The paper is not here, so that we cannot raise these questions.

Mr. Porter—What was the day and the hour of the day when this communication was made? A. It was December the 26th, Sir, I think, in the afternoon.

Q. What was the hour? A. Somewhere around three o'clock, I think.

Q. When did you note the hour? A. Well, it was a pretty important communication, and I made a memorandum of it on that account.

Q. Important to you? A. No; important to Mr. Tilton.

Q. The memorandum was made for his convenience? A. I made a memorandum of it because I thought it was worth while to make a memorandum of so important an occurrence, and as his friend I made it.

Q. Did he ask you to make one? A. No, he did not; it was my own thought.

Q. You have given all the conversation that occurred between you on that occasion? A. As far as I at present remember the conversation; yes, Sir.

Q. Did you see him afterwards before the 30th? A. Yes, Sir, I did.

Q. Several times? A. Yes; I think I saw him two or three times.

Q. At your house and at his? A. Yes, Sir, I think at my house and at his.

Q. Did you see him on the 27th? A. I think I saw him on the 27th; yes, Sir.

Q. What occurred between you on that occasion? Where was that, first? A. I don't know whether it was the 27th or not, but the next interview that I remember with him I can give you.

Q. Where was it? A. I think it was at my house—I think so—I think it was at my house.

Q. Did he come voluntarily? A. Yes, Sir.

Q. Not in pursuance of any agreement between you? A. No, Sir.

Q. Nor at your request? A. No, Sir.

Q. What took place; state fully? A. At the interview I am speaking of now, he told me he had sent word to Mr. Bowen that he was going to see Mr. Beecher within a short time, and wanted him (Bowen) to furnish him with the evidences he promised him to furnish him with, and that Mr. Bowen had come into his presence and told Mr. Tilton that he told Mr. Beecher that he (Bowen) said he would dismiss him from the papers

Q. What papers? A. Dismiss him from his employ, rather.

Q. What did he say to that? A. He said he would not be influenced by any threat; he would do whatever in his judgment he thought was best.

Q. Did he represent that at an interview? A. Between himself and Mr. Bowen?

Q. Yes, Sir. A. Yes, Sir.

Q. Was anything said in connection with the presentation of the letter by Mr. Bowen to Mr. Beecher? A. No, Sir.

Q. Did you understand that the interview was after that had been done? A. I did not understand whether it was before or after. It was in reference to the subject I have here spoken of.

Q. You did not then know whether it had or had not been there? A. No, Sir.

Q. Had he said anything to you about it on the 26th?

Mr. Fullerton—About what?

Mr. Porter—About the sending of that letter to Mr. Bowen. [To the Witness.] My associate and I don't understand you right. Was this angry interview before or after you understand the note had been sent to Mr. Beecher? A. I didn't understand anything about the note having been delivered to Mr. Beecher at that interview.

Q. Was anything further said upon that subject then, or upon any subject? A. No, Sir; not that I remember of.

Q. What was said on that occasion at that interview? A. That is the substance of it.

Q. Do you mean to say that you have already told all that was said? A. Yes, Sir; all that was said with Mr. Tilton.

Q. Did he consult you as to his relations with Mr. Bowen? A. Did he consult me then as to his relations with Mr. Bowen? No; there was no consultation as to his relations with Mr. Bowen.

Q. Was there any conversation about the probability of the termination of their relations? A. No, Sir.

Q. And about the probable dismissal of Mr. Tilton? A. Nothing further than I have narrated.

Q. Was this a short interview with Mr. Tilton? A. It was not a very long one; I don't know how long it lasted.

Q. Only long enough for that to transpire? A. I would not say it was only long enough for that.

Q. Was anything at that time proposed to be done either by him or by you? A. No, Sir; I think not.

Q. Was anything said at that time about Mrs. Tilton? A. I don't think there was at that interview.

Q. When was the next interview that you remember? A. The next interview was on the evening of December 30th, or the afternoon or evening of December 30th, that I remember.

Q. I understood you to say there were several interviews between the 26th? A. The next interview that I remembered, I said.

Q. Had there been any conversation between you and him in regard to procuring a statement from Mrs. Tilton? A. No, Sir.

Q. None before the 29th, nor on the 30th? A. None before the 29th—if you will put the question so that I can clearly understand it

Q. Nor on the 30th? A. Will you put the question in full, please?

Q. None before the evening of the 30th? A. I don't exactly understand you.

Q. Any conversation between you and him about Mrs. Tilton before the evening of the 30th? A. No, Sir; I think not.

Q. When Mr. Tilton came to your house that evening, were you aware that Mr. Bowen failed to sustain that demand for Mr. Beecher's retirement? A. I had no conversation with Mr. Tilton about that.

Q. And hadn't heard of it? A. Hadn't heard whether he had failed or not, Sir, that I remember now.

Q. You say that Mr. Tilton's letter of the 1st of January, 1871, to Mr. Bowen, gives, in substance, and more in detail, what Mr. Tilton had said to you in the conversations of December 26th, and that of a day or two after? The conversation of a day or two after is the one referring to the excited interview? A. He gives in the letter to Mr. Bowen, bearing date January 1st, 1871, the substance of the interviews which he had with Mr. Bowen.

Q. Did Mr. Tilton, in these preceding interviews, or either of them, avow his belief in the truth of Mr. Bowen's statement in regard to Mr. Beecher? A. He said he had no doubt of the truth of Mr. Bowen's statement. On December 26th I think he said that.

Q. Did he add any statement of his own? A. Yes, Sir; he said he had no doubt, on account of the unhandsome advances which he knew Mr. Beecher had made to his wife; that, I think, he said on December 26th.

Q. Did he mention any rumors that had come to himself in regard to Mr. Beecher's moral character? A. I don't remember that he did.

#### TILTON'S FIRST CHARGE AGAINST BEECHER.

Q. Had Mr. Tilton ever said anything to you before, in regard to the moral character of Mr. Beecher, except on the occasion to which you adverted? A. With regard to the moral character of Mr. Beecher?

Q. Against the moral character of Mr. Beecher? A. I think Mr. Tilton, anterior to December 26th, had said that Mr. Beecher preached to his mistresses in Plymouth Church.

Q. When was that? A. I don't remember the date, but it was previous to December 26th.

Q. Years previous? A. No, Sir; not years.

Q. Who was present on any occasion when he used that precise language? A. I don't remember that anybody was.

Q. Are you able to say whether it was in, or before, 1870? A. It was in 1870.

Q. Are you able to say whether it was in the beginning or the latter part of that year? A. I should think it was the latter part—the last half of the year.

Q. Did he name those mistresses? A. No, Sir; he didn't.

Q. Did you make any inquiry about it? A. I did not.

Q. Prior to that, had he ever said anything to you to the detriment of Mr. Beecher's moral character? A. I think that he never said anything to the detriment of his moral character previous to 1870. He talked with me about his courage—his lack of political courage.

Q. When first, in 1870, had he spoken against his moral character otherwise? A. When what?

Q. When first, in 1870, had he spoken against his moral character otherwise? A. I thought I had answered the question.

Q. No; you answered that he did in the latter part of the year. I inquired had he before, in 1870, spoken against his moral character? A. I don't remember distinctly, Sir, that he had.

Q. You are unable to say either way upon that subject? A. Yes, Sir; I am unable to answer.

Q. When was it he had spoken in respect to his want of political courage? A. I think about the time of the Cleveland letter, whenever that was.

Q. Do you remember about what year that was? A. No, Sir; I don't. Whether it was about the time of the Cleveland letter that he spoke to him—it was certainly concerning the Cleveland letter.

Q. When he told you that Mr. Beecher preached to several of his mistresses, did you believe it?

Mr. Beach—Wait one moment.

Mr. Porter—I submit it to your Honor.

Judge Neilson—Please repeat the question.

Mr. Porter—My question was when Mr. Tilton, in 1870, told you that Mr. Beecher preached to a dozen of his mistresses, did you believe it?

Mr. Morris—He didn't say that; he didn't use that language.

Mr. Porter—To several of his mistresses.

Mr. Morris—I am not sure that he used the word "several."

Judge Neilson—Can you state it outside?

Mr. Fullerton—No; the question is, did he believe it?

Mr. Porter—I ask if the witness believed it when Mr. Tilton told him?

Judge Neilson—How is it material?

Mr. Porter—I think it is material to show the state of mind in which he went to the interview with Mr. Beecher, of which Mr. Tilton was aware, and which he had produced.

Judge Neilson—Well, the witness may answer.

Q. [By Mr. Porter]: Did you believe it? A. I couldn't believe it, Sir.

Q. And didn't? A. And didn't.

Q. Was your wife at that time a member of Mr. Beecher's church? A. She was.

Q. Does she continue to be so? A. Her name is still on the roll of Plymouth Church. She has not taken communion there since 1870. She has not partaken of communion in that church since 1870.

Q. Or attended church? A. I won't say since 1870; since she came into possession of the facts in the case.

Mr. Evarts—The date is all we ask—the time.

The Witness—I cannot state the exact date.

Mr. Porter—My inquiry was not about communion. My inquiry was when she ceased to attend Plymouth Church? A. I cannot answer that question, Sir, when she ceased to attend Plymouth Church.

Q. You do not know? A. I do not know.

Q. Did she continue to attend that church after January 1871. A. I think she did for some little time after January, 1871.



Q. Did you attend any church? A. I did not regularly attend any church at that time.

Q. Did you pay for her pew-sitting up to 1874? A. I think we had a pew in the church, and I paid for it. I don't remember whether it was up to 1873, or not. Up to 1873?

Q. Did your wife become an attendant of any other church? A. No, Sir; not that I know of.

Q. Down to the present time? A. Down to the present time.

Q. Had you, prior to 1871, been a regular attendant of Plymouth Church? A. No, Sir.

Q. Nor since? A. Nor since.

Q. When did you last attend Plymouth Church? When were you last there—I mean on the occasion of a religious service? A. On the evening of the report of the Committee, I believe, was the last time that I was there. [Laughter.]

Q. You understood that to be a religious service, did you? A. No, Sir, not very. I understood it to be a meeting in Plymouth Church. I beg pardon for answering your question, Mr. Porter, without understanding it.

Q. My inquiry was when you last attended a religious service at Plymouth Church? A. I didn't understand the question in that way, when I last attended a religious service in Plymouth Church. I don't remember.

Q. Can you remember within a year? A. I think I have been at Plymouth Church within two years, certainly, two or three times.

Q. Do you remember the occasion of your going? A. Within the last two years? No, Sir; I don't remember the occasion particularly.

Q. Was it with your wife? A. I don't remember that.

Q. Have you a distinct recollection of being at all at Plymouth Church since the occasion when you went and sat in Mr. Tilton's pew, and Mr. Beecher came and spoke to you? A. Oh! yes, Sir.

Q. What year was that? A. That was in the year 1868, I think.

Q. Was your wife's uncle, George C. Robinson—were his wife and family attendants and communicants at that church? A. They were.

Q. He was a member of the late firm of Woodruff & Robinson? A. He is a member of the firm of Woodruff & Robinson to-day.

Q. And of the late firm also? A. Yes, Sir.

Q. Were you in the habit of contributing to the funds of Plymouth Church? A. If I was ever there when there was a subscription taken up, very likely I subscribed; I don't remember.

Q. But not otherwise, except in the payment of pew rent? A. I think not.

Mr. Evarts—It is now four o'clock, the hour of adjournment, if your Honor please.

Judge Neilson—The audience will wait one moment. I wish the Jury to pass out first. [To the Jury.] Gentlemen, be in your places at 11 o'clock to-morrow.

Mr. Mallison—[The Clerk.] The Court stands adjourned until to-morrow morning at eleven o'clock.

The Court thereupon adjourned until 11 o'clock, Wednesday.

## EIGHTH DAY'S PROCEEDINGS.

### MR. TRACY CONDUCTS THE CROSS-EXAMINATION.

THE EVENTS OF THE NIGHT OF MR. BEECHER'S ALLEGED CONFESSION TOLD WITH ADDITIONS—FURTHER CONSIDERATION OF MR. BOWEN'S ALLEGED STORIES ABOUT MR. BEECHER—THE AUTHORSHIP OF MR. MOULTON'S STATEMENTS.

Those who were present at the great Brooklyn trial and complained on Tuesday that the cross-examination of Mr. Moulton by ex-Judge Porter was tedious and wearisome, had no cause for fault-finding on Wednesday. Upon the opening of the Court, Mr. Evarts took occasion to announce the fact that Mr. Porter was suffering severely from a cold, and would be unable to appear in court for at least a day or two. Counsel for the plaintiff were evidently not at all pleased by this announcement, and when Mr. Evarts remarked that the defense might have to divide between two of the counsel the labor of cross-examining Moulton, Messrs. Beach and Fullerton protested vigorously. They held that it was the practice to limit the examination of a witness to one lawyer, and Mr. Fullerton made the suggestion that if the ordinary custom in such matters were not adhered to, it might be advisable to discontinue the trial until Mr. Porter should be able to appear. While the lawyers were earnestly discussing the question, Mr. Moulton appeared entirely cool and unconcerned. He leaned back in his chair, smiled occasionally with a complacent expression, and seemed to derive considerable satisfaction from the sharp tilts between counsel. Mr. Evarts adhered to his proposition with characteristic tenacity. When it became apparent that he would carry his point, Mr. Beach took occasion to refer to the testimony of Mr. Moulton concerning Mr. Tracy's alleged dealings with him. His remarks were very pointed, and his hostility to Mr. Tracy was thinly disguised by the gravity of his manner. When Mr. Evarts remarked that Gen. Tracy needed no vindication there was a murmur of approval from the spectators. Gen. Tracy repelled the imputations made against him in a short but effective speech which closed with the remark: "And for the responsibility I now take I am prepared to answer to my conscience and my God." His dignified and impressive delivery of these words drew out applause which was promptly repressed.

Just before the hour for recess, Gen. Tracy asked

Mr. Moulton to relate the conversation which took place between Mr. Beecher and himself on the night when the defendant is alleged to have confessed that he committed adultery with Mrs. Tilton. Moulton, in the course of his narrative, stated that Mr. Beecher said to him that "he had loved Elizabeth Tilton very much, that the expression—the sexual expression of that love—was just as natural in his opinion, he had thought, as the language he had used to her." Gen. Tracy, with considerable emphasis, asked the witness how it was that in his answer he had paused to add the word "sexual," just as he had done in a similar connection in his direct examination by Mr. Fullerton. This query led to a long and sharp dispute between counsel concerning the correctness and official character of THE TRIBUNE's report of the direct examination. Mr. Beach, in sonorous tones, insisted that Mr. Moulton had not made the correction referred to by Gen. Tracy. Reference to the stenographer's notes disclosed the fact that the witness, when questioned by Mr. Fullerton, said that Mr. Beecher "considered his sexual intercourse with Mrs. Tilton was natural—an expression of his love for her." It appears that in transcribing his notes the stenographer omitted the word "as," and consequently the testimony should have read, "his sexual intercourse with Mrs. Tilton was as natural an expression," &c.

#### THE MANNER OF EXAMINATION.

The cross-examination was begun in a bland and courteous way, but there was immediately noticeable a wide diversity of manner and object between the examiner of Wednesday and the man by whom the questions of the preceding day were propounded. The answers of the witness were not given without deliberation, but he had the appearance of perfect self-possession. The contrast between Judge Porter's style of examination and Gen. Tracy's became very sharp and clear after the first few questions were put. The General's queries were announced in a manner and with an emphasis which placed the witness on his guard immediately, whereas Mr. Porter, in his quiet and persuasive way, inspired Mr. Moulton with a degree of confidence which led him more than once into unwary admissions. It was developed that the memory of the witness was defective in regard to several important events which came under his observation. He could not recall whether Mrs. Tilton were ill or not when he called upon her at the plaintiff's house to get her

letter to Mr. Beecher; he did not know whether Mr. Tilton called at the house with him, and he did not remember whether Mr. Tilton was in the house or not when he called. "I don't remember" was an expression which he used frequently. Messrs. Beach, Fullerton, and Morris came to Mr. Moulton's aid whenever opportunity offered, and their spirited objections to the questions of counsel on the other side helped the witness greatly in his efforts to appear entirely unembarrassed.

Gen. Tracy's interrogatories followed each other very rapidly, but the witness was not equally quick in his answers, and declined to reply until he comprehended their meaning thoroughly. When he admitted that he would have destroyed Mrs. Tilton's alleged confessions, if Mr. Beecher had insisted on it, after giving up Mrs. Tilton's letter of retraction, counsel for the defense exchanged smiles. Without hesitation Mr. Moulton said that he would have assumed the responsibility of destroying the letters independent of Mr. Tilton.

During the afternoon session Mr. Moulton showed less self-possession than in the morning. His answers were given more sharply, and indicated something akin to anger. He testified with apparent reluctance that Gen. Benjamin F. Butler was the author of his celebrated statement, and from that time to the hour of adjournment his answers to Gen. Tracy's interrogatories were given in a sullen kind of way which contrasted strongly with his amiable replies in the morning. Mr. Beecher and his counsel were much gratified with the day's developments, and made no attempt to conceal their satisfaction. Messrs. Beach, Fullerton, and Morris, on the contrary, were quite nervous in their movements, and neglected no chance to make an objection. They were on their feet constantly, and hotly contested every advance of the opposite side against their position.

#### MINOR MATTERS OF THE TRIAL.

"A good, contented, well-breakfasted juryman is a capital thing to get hold of," said Counselor Perker in a burst of confidence to his client, Mr. Pickwick. Mr. Perker, growing more confiding, added, "and a discontented or hungry juryman always finds for the plaintiff." This remarkable opinion does not appear in Blackstone or Coke, and for this reason the counsel for Mr. Beecher may not attach much importance to it. Yet it is a notable fact that Mr. Perker insists that



the court shall adjourn as soon as the hour for recess arrives. The jury, as a consequence, have come to look upon him in a very grateful way. With but one or two exceptions the jurymen are very attentive, and their manner indicates a determination to weigh all the evidence presented fairly. On Tuesday afternoon one of the jurors indulged in a short nap, but on Wednesday they were all awake and careful listeners.

Frank B. Carpenter, the artist, whose name has had so prominent a place in connection with the scandal, made his first appearance in court on Wednesday morning. He entered with Mr. Tilton, and took a seat just behind Mr. Fullerton, in a position where he could look straight into Moulton's face. Mr. Carpenter was quite pale, and had the appearance of one who was recovering from a severe attack of illness.

The defendant and his wife listened throughout to the proceedings with the utmost attention. Occasionally Mr. Beecher gave a whispered suggestion to Mr. Shearman, which was promptly acted upon. There were no ladies in court on Wednesday, except the four interested in the case. Among the spectators were two or three clergymen, Judge Tibbitts of California, Gen. Henry W. Slocum, Judge Moore, Col. Beecher, the Rev. Edward Beecher, and Francis D. Moulton's old antagonist from Plymouth Church, Prof. Rossiter R. Raymond.

A bill authorizing the continuation of the trial for another term has been forwarded to Albany. On Wednesday morning ex-Judge Fullerton called Judge Neilson's attention to the fact, and remarked that the trial might last longer than one additional term. "The bill is defective in that respect, and should provide for the continuation of the trial until it is concluded," said Judge Neilson. "That is the amendment which I was about to suggest," replied Mr. Fullerton. A short conversation concerning the matter took place between the two, and it was decided by the Judge to have the bill amended.

#### THE PROCEEDINGS.

Ex-Judge Porter has been suffering for several days from influenza, and the difficulty was so much worse on the 20th that he could not appear in Court. He hopes to take his place again in two or three days. Mr. Evarts explained these facts at the opening of the morning session. The work of Mr. Moulton's cross-examination, which Mr. Porter had been assuming, fell on Gen. Tracy. Mr. Evarts put a few questions. The intense enmity known to exist between Gen. Tracy and

Mr. Moulton led all present to anticipate a lively and interesting day, and they were not disappointed.

#### THE RULES OF CROSS-EXAMINATION.

Francis D. Moulton recalled, and cross-examination resumed:

Mr. Evarts—If your Honor please, I am sorry to announce to the Court that our associate, Judge Porter, is not well enough to be in Court. He has been laboring under a very severe influenza for four or five days, and nothing but his sense of professional obligation to continue as far as he could an examination which he had commenced on Monday—your Honor is aware the rule is that the same counsel should proceed—brought him to court on Tuesday. He was then suffering so much that he could not speak at the tone that would have been more desirable without great pain, or even as he did speak; and on Wednesday morning, as I was coming over, I received a note from him saying that he is unable to be out. He hopes, with medical aid, to be able to be with us on Thursday or Friday.

Judge Neilson—I am very sorry indeed to learn that he is ill. I knew that he was not very well on Tuesday. Will you take his place, Sir, in the cross-examination?

Mr. Evarts—Well, we shall be obliged, if your Honor please, if that is the direction of the Court, to divide the matter of the cross-examination, probably, between Gen. Tracy and myself. It is wholly unexpected to both of us that we should be called upon to act at all.

Mr. Beach—I hope an order of that kind, Sir, in regard to the course of the cross-examination will not be made. I was aware on Tuesday that my friend Judge Porter was suffering under a severe indisposition, which in a great degree incapacitated him for the performance of his duty in conducting the cross-examination, and I mentioned to him in a private remark that I thought he was in that condition and should surrender the duty to some other person; and I very much regret to see, Sir, that that incapacity has been the subject of several ungracious remarks in regard to my friend, which I do not think would have been indulged in if the cause of dissatisfaction had been known to the gentlemen who made those remarks. We quite readily consent, Sir, that any other of the counsel on the part of the defense should continue the cross-examination, but to divide that duty among several counsel I think would be such an infraction of the practice and such an injustice to us that we cannot consent to that. We would far rather that the trial should be suspended, or that the cross-examination of Mr. Moulton should be suspended until Judge Porter is able to continue it; but to give to three or four counsel upon the other side that part of the cross-examination of the witness, it seems to me will be apparent to your Honor as an impropriety in practice and as an injustice to us.

Judge Neilson—Perhaps it would, and very likely will, be unnecessary. I think the gentlemen can conform to your suggestion.

Mr. Evarts—The difficulty, as your Honor understands, and as my learned opponents well understand, of the sudden re-

removal from the discharge of a responsible part of a duty in a trial of this kind, that has been assigned to one counsel, and for which preparation has been made by him, is not a trivial difficulty; nor does the fact that I am informed at 10 o'clock at my house that Judge Porter will not be here on account of illness, enable me, in passing from my house to the court-room, to be prepared to conduct the cross-examination of the witness, in regard to whom I had expected to take no part whatever; and so with my learned associate, Mr. Tracy, whose greater familiarity with the cause may enable him, no doubt, more readily to prepare himself for the conduct of the cross-examination; and it may be necessary, therefore, that as my learned friends have suggested, they should withdraw this witness and proceed with the examination of some other witness.

Judge Neilson—I think it would be better, Sir, to proceed with him now. I think you are master of the subject.

Mr. Evarts—We thought we should be allowed to conduct the cross-examination as we find it necessary in this emergency.

Judge Neilson—You can overcome the difficulty by consultation with Gen. Tracy.

Mr. Evarts—That will create delay.

Mr. Beach—Delay is better than injustice.

Mr. Evarts—It is not a question of injustice, if your Honor please. It is a mere question of the regularity of the conduct of cross-examination. The old practice used to be for two or three counsel to conduct a cross-examination.

Judge Neilson—We will endeavor to conform to the necessities of the case as they may appear, Sir.

Mr. Evarts—We suggest to your Honor that that may be necessary, and if we understand that if we think it necessary we shall have that privilege, why, then—

Judge Neilson—I don't deny it, Sir. We will see if there is any occasion for it, and I will endeavor to consult your interests in regard to it.

Mr. Fullerton—If your Honor please, we do not wish to deprive our learned adversaries of any advantage to which they are properly and legally entitled. We, of course, appreciate the disadvantage under which any one of their number will now take up the cross-examination, and so far as we are concerned, in order that they may have every possible opportunity for preparation, and keep themselves within the limit of the rule, confining the cross-examination to a single counsel, we are quite willing to take any course that your Honor may think fit and proper, under the circumstances, to relieve them from their embarrassment. We should not object to the postponement of the trial of the cause until Judge Porter should be able to return and resume his duty, nor should we object to taking up some other witness and leaving Mr. Moulton's further cross examination until they were in a state of preparation, as they are not now. We do not want it understood that we urge any course that should deprive them of any legal advantage to which they are justly entitled; but we do think that when the further cross-examination of Mr. Moulton is resumed, it should be confined to a single counsel. That is due to us, and that is nothing more than justice to the witness. Although the rule was once that a witness might be attacked by a number of counsel upon cross-examination, yet that rule has given way to

a more enlightened consideration of the subject. It is no longer the rule; it has not been the rule for many years in this State, and I trust it will never be the rule again. It is due, I say, to the witness, and it is due to our side of the case, that a single counsel should cross-examine the witness.

Judge Neilson—I appreciate what you say. I have no doubt that Mr. Evarts, who has been constantly in attendance, will find himself quite able to proceed with the cross-examination, and we will give him all the facilities we can. I think it is better to proceed that way now than to defer it, or let the proceedings stand over.

Mr. Evarts—Then the further cross-examination will be conducted by my associate, Gen. Tracy.

Judge Neilson—Very well.

#### GEN. TRACY'S CONDUCT CRITICISED.

Mr. Beach—I think, Sir, a single remark should be made in regard to that proposition on the part of the plaintiff. Your Honor is aware that in the testimony of this witness, circumstances have been disclosed which, if they are entirely accurate, would incapacitate Mr. Tracy from appearing at all in this case on the part of the defendant. I do not care, Sir, to relate testimony upon that particular subject; it is undoubtedly within the recollection of your Honor. It has been to us a subject of very embarrassing and painful consideration, Sir, whether any steps should be taken upon the part of the plaintiff in a formal application to this Court, presenting that subject for its deliberation and determination. If it be true, Sir, that in an interview between this plaintiff and Mr. Tracy a revelation of his case, to a considerable extent, was made, and an assurance given by Gen. Tracy, upon the faith of that revelation, that in case of any difficulty between Mr. Tilton and Mr. Beecher, Mr. Tracy would not appear as an adversary counsel to him, the impropriety, the indelicacy, the unprofessional act of Mr. Tracy's appearing in this trial in opposition to the plaintiff would not be countenanced by this Court. I am quite willing, Sir, to a very considerable extent, to leave that question to the consideration of the counsel himself; and it is only in consequence of this extraordinary and accidental condition of things that I am led to suggest to your Honor, and to the counsel upon the other side, that perhaps the action of Gen. Tracy in continuing the cross-examination of this witness would be unprofessional and inadmissible.

Judge Neilson—I think I must leave it to the defendant's counsel to arrange which shall cross-examine.

Mr. Evarts—Since these observations have been made, if your Honor please, perhaps I may be permitted to make a few. It is not in any vindication of Gen. Tracy, for I do not think he needs any, but it is in reference to the observations of my learned friend on a matter extraneous to the conduct of the trial in respect to the issue between these parties, to wit, in respect to a fragment of evidence that has been given by this witness, and that my learned friend thinks should disable the defendant's counsel. We have not had any verdict of this jury on this gentleman's testimony. We have not heard what is to be said upon that subject, and on his testimony it is very difficult for me to see anything in his manner of stating it even, that does



not disclose, what is apparent, as I think, otherwise, that Mr. Moulton regards himself as a party to this transaction, and that whatever passed between himself, though acting only as a friend of Mr. Beecher, and with a wise head called in to confer in the same interest—how that should be converted into a disability to continued fidelity to Mr. Beecher on Mr. Tracy's part, when a change of attitude has arisen on the part of the witness. Now, that is the way I look at that matter.

Mr. Beach—If your Honor will permit me to say, Sir, that so far as the counsel has made reference to the relation which Mr. Moulton bears to this case, to use his own phrase, it is extremely extraneous to this discussion, and is a consideration which would have been more professionally and properly addressed to the jury than intimated in this interlocutory debate. The counsel also forget, Sir, that by the statement of the witness, the matter upon which we rely in the remarks which we have made, arose out of an interview—not between the witness and Mr. Tracy alone, but between the plaintiff in this case and Mr. Tracy, in which the plaintiff was reluctant to have the communication of his papers and matters made to Mr. Tracy, and consented to it only upon the express assurance upon the part of Mr. Tracy that in any antagonistic difficulty between Mr. Tilton and Mr. Beecher, he would not appear as the adversary counsel against Mr. Tilton.

Judge Neilson—I understand the spirit in which you make the suggestion. It is, perhaps, not one calling for argument really; and as I said before, I must leave the counsel for the defendant to proceed and supply Judge Porter's place as they think best this morning.

Mr. Beach—Your Honor will please note our objection to the action of Mr. Tracy, and exception to your Honor's ruling.

Judge Neilson—Yes, Sir.

Mr. Evarts—Well!—

Judge Neilson—Regulate it as you please, gentlemen; that is all I want to say about it; you are quite at liberty.

Mr. Evarts—I thought that our learned friends agreed that some one might take Judge Porter's place.

Judge Neilson—Yes, Sir; I leave it to you.

Mr. Evarts—But it is not for them to pick out the person to do it; and now, when the apparent greater fitness, from acquaintance with the part of the case now suddenly to be taken up, suggests Gen. Tracy's intervention; that intervention is made the subject of these remarks, and of our exception to your Honor's permission. Now, we say to our learned friends that Judge Porter's absence is a great injury to us, as well as a great regret in respect of him personally, and we are either to go on or not to go on.

Judge Neilson—You will go on, Sir, and regulate it in your own way.

Mr. Evarts—And if it is to be made the subject of an exception, why, then, it becomes a matter of deliberation with us, if your Honor please, as to how the arrangements shall be made.

Judge Neilson—I have left you at liberty to arrange it as you think best.

Mr. Evarts—Oh! yes; but your Honor sees that we cannot arrange in five minutes the preparations. We are ready to pro-

ceed in that way, but our learned friends make an objection to that; they make an objection to that, even to the point of an exception, and under that aspect of the case we desire to be able to determine freely which course shall be taken, and if it is necessary that I now suddenly should undertake to complete this cross-examination, why, then, it is necessary that I should be prepared for it, and not prepare myself in the presence of the Court, and the public, and the newspapers. And, under that view, our learned friends are entitled to their choice, whether they would rather this matter should stand until Judge Porter comes out, and the rest of the testimony go on, or stand until to-morrow morning, with the alternative of Judge Porter then being able to be out, or of some other counsel, to whom they have no objection of any kind, proceeding.

Judge Neilson—I think it would be more orderly to proceed with this witness now and close his examination, and I have intended to say that the defendant's counsel may, either of them, as they may elect, proceed with the cross-examination; and if it requires consultation, of course you will have it.

Mr. Evarts—May we reserve the right to apply to your Honor to divide the labor?

Judge Neilson—Well.

Mr. Tracy—Before proceeding to discharge the duty devolved upon me, the remarkable statement that has been made by counsel, and the evidence that has been given by the witness, call upon me, I think, for a brief statement of my connection with this case.

Judge Neilson—I don't think it does, Mr. Tracy; it will only lead to further debate. The mere act of your proceeding is a sufficient indication to me of your view of your duty, and that is enough for me.

Mr. Tracy—I am happy that your Honor takes that view of my position. I would say, however, that I have taken no step in this case without conferring freely not only with my associates as to my duty here, but with the most eminent members of the bar not connected with this case; and every step in it I have taken, I have taken on their judgment as to what I might professionally do with honor. I understand very well the position in which this prosecution has sought to place me in this case. But I came into this case as the *friend* of this defendant. However others may have changed, I have never; no act of mine has ever been inconsistent with that friendship, and I have performed every duty by the witness and the plaintiff that honor and justice called upon me to do. As for the responsibility which I now take, I am not only prepared to answer that to my conscience, but to my God.

Judge Neilson—That is sufficient.

[Cross-examination of Moulton continued.]

#### THE LETTER OF CONTRITION ONCE A SIMPLE APOLOGY.

Mr. Tracy—I find in your statement which you prepared for Mr. Beecher to make after the publication of the Bacon letter, which is "Exhibit 34," you refer to an apology which he had made to Theodore Tilton in that statement; do

you refer to any written paper—any writing as that apology?

A. The apology part which is quoted?

Q. Yes. A. To the paper, part of which is quoted; I think that is called an apology.

Q. In Mr. Tilton's letter to Dr. Bacon? A. Yes, Sir.

Q. That was the apology to which you refer. A. Yes, Sir.

Q. And that is the paper writing to which you understood Mr. Tilton to refer so often in the Bacon letter as Mr. Beecher's apology? A. That which is quoted in the Bacon letter—the writing?

Q. Yes, the writing? A. Yes, Sir.

Q. Will you tell us, Mr. Moulton, in what publication the name of that writing was changed from an "apology" to a "letter of contrition," first? A. In what public document—in what publication?

Q. In what publication was that first changed from an apology to a letter of contrition which you first saw?

Mr. Fullerton—One moment. That question is predicated on the assumption of a fact which is not in the case.

Judge Neilson—It appears so.

Mr. Tracy—Did you ever see it spoken of anywhere as a letter of contrition? A. I do not remember in what particular place I first heard it called—

Q. I do not ask you that; I think we will get on better if you answer my question. A. I will endeavor with the utmost courtesy.

Q. Did you ever see it in any publication as a letter of contrition until after you had had the benefit of the professional services of Gen. Butler?

Mr. Beach—That is assuming that he did see it somewhere as a letter of contrition, which does not appear.

Mr. Evarts—We can inquire if he ever did see it.

The Witness—Put the question again.

Q. Did you ever see it as a letter of contrition prior to the time when you availed yourself of the professional services of Gen. Butler?

Mr. Beach—In what form? In a publication or instrument?

Judge Neilson—He means that.

Mr. Beach—We do not know what he means—he must express it. Now if he is asking for the name applied to the instrument in some newspaper, it is immaterial and improper.

Judge Neilson—It is utterly immaterial at what time it was changed, unless the witness changed it.

Mr. Tracy—I mean any newspaper or any printed publication. When I use the word publication, I mean a printed publication. Did you see it anywhere printed as a letter of contrition before you availed yourself of the professional services of Gen. Butler?

Mr. Beach—We object.

The Witness—I don't think I ever—

Mr. Beach—Wait a moment when you hear an objection.

Judge Neilson—He answers that he does not think he did.

The Witness—I did not answer in that way.

Mr. Tracy—When had you last seen Mr. Tilton prior to your meeting him at his house on the 26th of December, '70? A. When had I last seen him?

Judge Neilson—Allow me to suggest that you should not repeat the questions.

The Witness—I shall not. Please to repeat that question again.

Q. When had you last seen Mr. Tilton prior to the interview with him at his house on the 26th December? A. I don't know when.

Q. Do you remember what day of the week the 26th was? A. I do not remember the day of the week.

Q. Was it on Monday? A. I don't remember.

Q. Had you seen him the day before? A. I don't remember that I had.

Q. Do you know that he was at your house on Sunday? A. I don't remember that.

Q. Did you know that he had published his valedictory as editor of *The Independent*, prior to that? A. I read his valedictory.

Q. I did not ask you that. I ask if you knew he had published it previous?

Mr. Beach—I think the witness is entitled to say that he knew it by reading 't.

Mr. Tracy—That he says. I ask him as to his knowledge; I don't ask him what he read. I ask if he knew he had published his valedictory in *The Independent* prior to that meeting?

Judge Neilson—The only way, of course, that he can answer that is that he saw it in the paper; unless he was present and saw him write it.

Mr. Tracy—I do not object to his answering in that way; but he was proceeding to say he read it.

Judge Neilson—He could not read it without seeing it.

Mr. Evarts—It is very immaterial, perhaps; he says he did know of it and read it; and I have no objection to this form of answer. But, your Honor will see that it is quite precipitate to allege that he cannot answer any other way than that he had read it.

Mr. Tracy—I repeat. Did you know that his valedictory had been published in *The Independent* prior to Dec. 26th?

Judge Neilson—Answer, yes or no.

The Witness—I cannot answer the question, without explaining, yes or no; I do not remember now the day when it was published; but when it was published I read it.

Q. Then you knew of it at the time of publication?

Mr. Fullerton—That does not appear.

Mr. Evarts—Let us understand; I understand the witness to say that it came to his knowledge at the time it was published.

Judge Neilson—The time that he saw it in the paper.

Mr. Beach—That would be the day that he saw the paper; it may have been a week after.

Mr. Evarts—I understand his answer to be (and we are now talking of what it is, and not what it ought to be), that when it was published he then saw it.

Mr. Fullerton—I don't so understand his answer at all.

[THE TRIBUNE stenographer was here called upon to read the answer of witness.]

Mr. Tracy—Now, had you read it prior to Dec. 26th? A. If you give me the date of the editorial, I can tell you.

Q. The 22d. A. That was the date *The Independent* was issued?



Q. Yes. A. I think I read it on the first day *The Independent* was issued.

Q. Had you been, on the 26th December, informed that Mr. Tilton had made two contracts with Mr. Bowen at \$5,000 a year—one as editor of *The Union* and the other as contributor to *The Independent*? A. I have been informed that he had made contracts. I do not know whether I was informed before Dec. 26th or not.

Q. Had you been informed of that on the 26th December, prior to this interview with him? A. I don't know whether it was prior to this interview with him on the 26th or not, at the present moment; I think it was, however.

Q. Did you know that he was to have an interview on the 26th December with Mr. Bowen and Mr. Oliver Johnson before the interview occurred? A. I cannot swear now that I did know that, positively.

#### THE INTERVIEW ABOUT THE BOWEN CHARGES.

Q. Was it a week day or a Sunday, Dec. 26, when you were at his house? A. I don't remember whether a week day or Sunday.

Q. Do you remember what time of the day you went to his house on that day? A. I remember from a memorandum that I made at the time.

Q. I don't ask that; I ask if you remember the time? A. It was in the afternoon of Dec. 26th?

Q. Do you remember the time that you went there? A. Somewhere in the neighborhood of three o'clock.

Q. Was he at home when you went there? A. That I can't say, positively.

Q. Did you see Mr. Tilton on that day? A. I don't think I did.

Q. Did you wait for Mr. Tilton's return on that day? A. I don't think I waited for his return.

Q. Did you know where he was? A. I don't know that I did.

Q. Did you know what time he was to return? A. I did not.

Q. How long did you wait for him before he came? A. I do not know that I waited for him at all.

Mr. Beach—This question is on the assumption that he did wait?

Mr. Tracy—I understood him to say that he did wait, on his direct examination. But I will ask him. [To the Witness.] Was Mr. Tilton at home when you went there that day? A. I do not remember now.

Q. Do you know what took you to Mr. Tilton's house that day? A. I went there as I usually went to his house.

Q. Do you usually go to his house on week days at 3 o'clock in the afternoon? A. I go there almost any hour of the day when it is convenient.

Q. Do you go every day at 3 o'clock in the afternoon? A. No, Sir.

Q. Do you usually go every day at 3 o'clock in the afternoon? A. No, Sir; there was no usual hour for going.

Q. Are you there usually every day at his house? A. There have been times when I have been there every day.

Q. At this time were you? A. I don't think I was at that time.

Q. How often do you think at this time that you were in the habit of visiting the house on week days, during business hours? A. Well, I certainly do not remember.

Judge Neilson—State as near as you can tell?

Witness—Not very frequently.

Mr. Tracy—On informing you of the letter he had sent to Mr. Beecher by the hands of Mr. Bowen, did he tell you when he supposed that letter was to be delivered to Mr. Beecher? A. I don't think he told me when he supposed it was to be delivered.

Q. Did you make any other remark to him about his sending the letter without Bowen's signing it, except that he was a fool? Did you say to him that he was a ruined man? A. I don't think I did.

Q. Do you recollect that you did not? A. I am trying to state the truth as near as I can remember.

Judge Neilson—Say yes or no.

Mr. Evarts—We might as well say, once for all, that is covered by the oath he has taken—that he is to tell the truth. It is not necessary to repeat that.

Judge Neilson—Yes; answer yes or no?

Mr. Fullerton—We might as well say that the last question was covered by the former answer.

Mr. Tracy—That would be a ground of objection.

Mr. Fullerton—Well, perhaps so; but we will make our own form of objection.

The Witness—Now, if you will ask me the question again I will try and answer it.

Mr. Tracy—My question is, did you not so state, or do you recollect that you did not say to him that he was a ruined man? A. To the best of my recollection, I should say no.

Q. How long was that interview between you and Mr. Tilton on that occasion? A. It may have lasted half an hour or an hour.

Q. Did you learn from him at that time the object of the interview that he had with Mr. Bowen?

Mr. Fullerton—We object to that. How can his opinion be asked of the object that Mr. Tilton had?

Mr. Evarts—Your Honor has ruled that the witness may answer the preliminary question, yes or no.

Judge Neilson—The objection is, that this question asks for a deduction, and not what was said.

Mr. Tracy—I will change the form of my question. [To the Witness:] Was anything said by Mr. Tilton on that day as to the object of the interview he had with Mr. Bowen? A. I think there was, Sir.

Q. Did he tell you on that occasion that rumors affecting his moral character had come to Mr. Bowen, which led Mr. Bowen to think of breaking the contract with him which he had just made, and that the object of the interview was to enable him to explain these rumors which had reached Mr. Bowen? A. I cannot answer the question without explaining it.

Judge Neilson—Go on, Sir, and answer.

The Witness—Mr. Tilton, as I remember, said to me what he had done at the interview.

Q. I do not ask what Mr. Tilton said to you.

The Witness—May I explain, your Honor? I cannot answer the question without explaining.

Judge Neilson—The common practice is to answer and then explain afterwards.

Mr. Morris—It would be difficult to answer a speech the counsel makes to the witness.

Mr. Evarts—If there is any objection to the question that is one thing, but if the question is proper, then we are entitled to an answer.

Mr. Fullerton—Our objection is not that you are not entitled to an answer.

Judge Neilson—But then you must take the answer as it is given.

Mr. Fullerton—The question is so framed that a categorical answer may not convey the whole truth.

Mr. Beach—The question does not ask the witness to state whether Tilton did, in substance, or not say so; but it calls for him to state if Tilton said so in the precise language of the question. If the very words were not used, I ask your Honor to instruct the witness that he can answer one way or the other.

Mr. Evarts—It is not the province of the Court to instruct a witness how he can evade answering a question; and yet my learned friend asks your Honor to instruct the witness that if one word is left out he can refuse to answer such a question as that. We have asked the question, and if it is objectionable it must be objected to. If it is not objectionable then the witness should answer, and his answer will be just what his sense of the oath and his conscience dictates; but it is his answer that we are entitled to.

Judge Neilson—I want to say to Mr. Evarts that he was in error in using the word "evade," as applied to the witness on the stand.

Mr. Evarts—I submit to your Honor's correction; but this was an extraordinary proposition.

Judge Neilson—It is a proposition raised by counsel.

[THE TRIBUNE stenographer was called upon to repeat the question.]

Q. Did he tell you on that occasion that rumors affecting his moral character had come to Mr. Bowen, which led Mr. Bowen to think of breaking the contract with him which he had just made, and that the object of that interview was to enable him to explain these rumors which had reached Mr. Bowen? A. I answer that question, no.

Q. Did he tell you that that interview had been brought about by Oliver Johnson, to whom Mr. Bowen had conveyed certain rumors which he had heard about Mr. Tilton? A. No.

Q. Did he tell you at that interview that Mr. Bowen had repeated the rumors and stories which he had heard about Mr. Tilton? A. No.

Q. Did he tell you at that interview that he had attacked Mr. Beecher to Mr. Bowen, by saying that Mr. Beecher had made unhandsome proposals to his wife? A. He did say that.

Q. Did he say in that interview that he offered to join Mr. Bowen in a war upon Mr. Beecher? A. No; he did not say that.

Q. Did he say that he offered Mr. Bowen to draft the letter which he read? A. Put that question again.

Q. Did he say that he offered to Mr. Bowen to draft the letter which he had read, and which Mr. Bowen agreed to prepare to Mr. Beecher? A. No, Sir.

Q. Did he say that he did draft the letter? A. No.

Q. Did he say he wrote it? A. Yes; he wrote it.

Q. He said he wrote it? A. Yes.

Q. Now, when did you see Mr. Tilton after that interview? A. I saw him between that time and December 30th some time; I cannot remember the date now.

Q. Did you know, at the time of the second interview with Tilton, that his letter to Beecher had been delivered by Bowen? A. I did not.

Mr. Beach—What do you call the second interview?

Mr. Tracy—The first interview that occurred after the 26th of December.

Q. You did not know it had been delivered to Bowen? A. To Mr. Beecher, you mean?

Q. Yes; did you inquire whether it had? A. I did not.

Q. And you did not know then that Mr. Beecher had that letter? A. I did not.

Q. At the time of the second interview did you know that this angry interview between Bowen and Tilton had occurred? A. I did; I knew that an angry interview had occurred.

Q. An angry interview had occurred? A. Yes, Sir.

Q. Subsequently to the 26th? A. Yes, Sir.

Q. Did you know whether that interview occurred after or before Bowen had delivered the letter to Beecher. A. I did not know anything about it.

Q. You did not know anything about it? A. No, Sir.

Q. And did not ask anything about it? A. I did not.

Q. Did you at any time between the 27th or 28th and the 30th ever ask Tilton whether his letter to Beecher had been presented? A. I did not.

Q. And you did not know? A. I did not know.

Q. And you did not know prior to the 30th that the letter had been received by Beecher, or what answer Beecher had made to it? A. No, Sir.

Q. And the conversation which you thought so important, on the 26th, as to make a memorandum of, you never had asked about since? A. No, Sir.

Q. What time on the 30th did you see Mr. Tilton—what time of day? A. Towards—in the evening, I think, Sir.

Q. Where? A. At my house.

Q. Do you know about what time? A. Think before—about 6 o'clock, I should think.

Q. About 6 o'clock? A. I think so.

Q. Did he take tea at your house that night? A. I don't remember whether he did or not.

Q. Whereabouts did the interview between you and him take place? A. I think in my front chamber, up stairs.

Q. How long was that interview? A. Not very long.

Q. Well, about how long? A. Oh, I should not think it was half an hour long.

Q. Was it half an hour long? A. I should not think it was.

Q. Was it 20 minutes? A. I should say it was.

Q. Then you went from his presence to the house of Mr. Beecher? A. Yes, Sir.



Q. And you said to Mr. Beecher what you have repeated on your direct examination? A. Yes, Sir.

Mr. Morris—He repeated that in his cross-examination.

Mr. Evarts—That is not a necessary interruption. Who made that interruption?

Mr. Morris—I made that interruption.

Mr. Evarts—It was not a necessary interruption. We had a right to ask the witness if he did in his direct examination say so.

Mr. Morris—I object to the question, on the ground that it has been all gone over on the cross-examination minutely, and they have no right to examine the witness to-day upon the same point upon which he was minutely examined yesterday.

Judge Neilson—That is so, if your recollection is right of what took place.

Mr. Morris—I am right in my recollection.

Mr. Tracy—Your Honor will observe that the cross-examination yesterday was general—referring generally to the various aspects of the case, with Judge Porter's plan of cross-examination, to come back and take up each interview separately and distinctly by itself, in the order in which it had been testified to.

Judge Neilson—I think, as a general rule, you should take up the examination where you left off.

Mr. Tracy—That is what I am doing.

Mr. Morris—No, Sir; and I appeal to the stenographer's minutes; he has been minutely cross-examined as to this.

Mr. Tracy—The cross-examination of Judge Porter at the close of the day, yesterday, had reached in order the point that I have now stated; and I am now going on with the witness in the order in which he stated the facts on his direct examination.

Mr. Beach—Well, that maintains our proposition that hitherto it has been a mere repetition of Judge Porter's cross-examination.

Mr. Tracy—No, Sir; I have gone through one interview and exhausted it, and now I propose to go to another, and I propose to go step after step.

Judge Neilson—Do you propose to go over the same ground Judge Porter went over?

Mr. Tracy—Oh! no; Judge Porter did not go over it.

Mr. Morris—Well, we say he did.

Mr. Tracy—I can't help your saying he did.

Mr. Morris—But the stenographer's minutes will settle it.

Judge Neilson—Well, it would be burdensome to look at the minutes as we pass from one subject to another. I think the counsel should act from recollection.

Mr. Beach—Your Honor will remember that Mr. Porter cross-examined this witness specially as to the interviews of the 26th and 30th of December, and with great minuteness inquiring into interviews as between those two dates, and carried the witness through the details of this very occurrence. Now, Sir, under the embarrassment in which my friends are situated, I do not care to be very particular upon that subject, and I think they are entitled to some degree of indulgence and license in that respect, but that this is but a repetition of the examination of Judge Porter, I think, must occur very readily to my learned friends.

Mr. Tracy—Judge Porter had just reached and entered upon this branch of the case in the order in which he had arranged it, and had talked about the first interviews of Dec. 26th, 27th and 30th.

Judge Neilson—Well, proceed, and keep within the rule; don't go over the ground—

Mr. Tracy—I shall endeavor to do so. I am pursuing precisely the plan of examination marked out by Judge Porter, precisely.

Mr. Tracy—You said on your direct examination, as I understood you, that on coming down the stoop Mr. Beecher said, "What shall I do?" A. "What can I do?" I think.

Q. "What can I do?"—and your reply to that was what; please repeat it? A. "I am not a Christian, but I will try and show you how well a heathen can serve you."

Q. Did you intend that as a proffer of friendship and service to Mr. Beecher? A. I did; yes.

Q. Then at that time you intended to proffer to Mr. Beecher your friendship and your friendly aid in this matter? A. Yes, Sir.

Q. On your way up you talked, you say, about the charges—you told him the charges which Bowen had made against him and Mr. Tilton? A. Yes, Sir; something of them.

Q. And you repeated those charges to him? A. Some of them; yes, Sir.

Q. And he expressed surprise at that? A. Yes, Sir.

Q. Saying that Bowen had said nothing of that kind to him? A. Yes, Sir.

Q. Did he also add, at that interview, that Bowen had not only not said anything of that kind to him, but that he had repeated stories to him about Tilton? A. I think not at that interview, Sir.

Q. Not at that interview? A. I think not at that—not on the evening of December 30th.

Q. Well, you say you think not. Are you willing to swear that he did not? A. He did; yes, Sir.

Q. He did? A. He did; yes, on the evening of December the 30th.

Q. Then repeat what he said on that subject, please—the subject of the stories which Mr. Bowen had told him about Tilton? A. He said that Mr. Bowen had said to him that he had heard certain stories against Mr. Tilton, and Mr. Beecher said that upon the basis of rumors that he had heard, he had sympathized with Mr. Bowen.

Q. And did he say that he had expressed that sympathy to Mr. Bowen that night? A. Yes, Sir.

Q. Now, what were the stories that he said Mr. Bowen had heard about Mr. Tilton? A. He did not mention them.

Q. He didn't mention them? A. No.

Q. At all? A. No, Sir.

Q. Can you state more fully Mr. Beecher's language when he repeated that part of your interview with him? A. No, Sir; not more fully—not now.

Q. What reply did you make to that? A. To the stories?

Q. Yes, to his reference to the Bowen stories about Mr. Tilton in which Mr. Beecher had sympathized? A. I expressed surprise—I don't remember exactly what I said.

MOULTON DECLAINS AGAINST BOWEN.

Q. Can't you recollect the substance of your language? A. I think I said to Mr. Beecher that Bowen was treacherous to both of them.

Q. What was the friend of neither? A. I don't think I said that.

Q. Don't think you said that, but said he was treacherous to both? A. Yes, Sir.

Q. Did you at that time express any opinion to Mr. Beecher concerning the truth of the stories which Bowen had told about Tilton? A. No; I don't think I did.

Q. What? A. I don't think I did at that interview.

Q. Are you certain of that? A. Yes, Sir; quite certain.

Q. Quite certain? A. Yes, Sir.

Q. Did you say anything to Mr. Beecher to remove from him the impression that you believed the stories true about Mr. Tilton?

Mr. Beach—That is objected to.

Q. Did you say anything to him on the subject of whether you believed that true or false? A. I don't think I did, Sir; I don't remember that I did.

Q. Well, did you intend by your reply that Bowen was treacherous to both of them to leave the impression upon Mr. Beecher's mind that you thought the stories about Tilton true?

Mr. Morris—The question is objected to. What he intended I submit is not material; state what he said.

Judge Neilson—I think his intent must be gathered from what he said.

Mr. Evarts—Well, if your Honor please, the witness has made a reply which, on one view of it, and perhaps the correct view, carries the impression in comparing that statement with the rest of his testimony, that he meant to say that Bowen had been treacherous in telling these true stories about Tilton, or that he had been treacherous to Tilton in the matter of friendship by telling false stories; we want to know which of those views he did present to Mr. Beecher.

Judge Neilson—Doesn't that appear by his conversation on the occasion?

Mr. Evarts—He did not answer that. We are cross-examining him to get at the actual drift and purport of his conversation as it was suited to produce an impression on Mr. Beecher's mind.

Judge Neilson—You have a right to that.

Mr. Tracy—That is what we ask the question for—what he intended by his answer that he made to Mr. Beecher.

Judge Neilson—That is a different question altogether. I agree with Mr. Evarts that you are entitled to the conversation—all of it.

The Witness—I will give the conversation, shall I?

Mr. Tracy—We are cross-examining this witness. He says that he made a certain answer to Mr. Beecher which is ambiguous. Now, we ask him what he intended by that answer; what he intended to convey, because the manner of speech, the accent, the intonation of voice, all carry with them their impression, which it is impossible for the witness to repeat to the jury, and we ask him what was your intention?

Judge Neilson—Now, the weakness of that point is this, that Mr. Beecher might understand that ~~he was~~ <sup>he was</sup>, and the witness, as he now recollects it, might have understood it in another way, and it don't help you a bit.

Mr. Evarts—Well, we will ask him what Mr. Beecher said.

Judge Neilson—You will get the conversation, of course.

Mr. Evarts—This is a part of it.

Mr. Tracy—Does your Honor exclude the question?

Judge Neilson—With that view, the mere intent, the mental reservation.

Mr. Tracy—Does your Honor exclude the question?

Judge Neilson—Yes, Sir.

Mr. Tracy—I will take an exception, and we will pass on?

Mr. Tracy—Did Mr. Beecher make any reply to that answer of yours about the treachery of Mr. Bowen? A. I said—Yes, Sir; he made a reply.

Q. What was it? A. He thought he was treacherous.

Q. And did you then renew to him your friendship—proffer of your friendship—that you would be his friend, and serve him? A. I don't remember that that followed, Sir.

Q. Don't remember that that followed again? A. No.

Q. That you again repeated it? A. No, I don't think I did.

Q. Where was your house in Clinton-st. A. 143 Clinton.

Q. Between what streets is that? A. That is between Livingston and the street below it—what is that?—Schermhorn.

Q. Well, on entering your house that night, Mr. Beecher passed up stairs, by your direction, to the second story, front room? A. I passed him into the second story and the front room; yes, Sir.

Q. And you remained in the parlor below? A. Yes, Sir.

Q. Did you lock the front door after he went in that night? A. I don't remember that I locked the front door.

Q. You don't remember that you did? A. No; very likely I did.

Q. Don't you remember that you did? A. No, I don't remember that I did.

Q. Why, then, do you say it is very likely you did? A. Why, I usually locked the front door when I went into the house.

Q. You did? A. It is my habit; yes, Sir.

Q. When you have friends in, it is your habit to lock the front door? A. Yes, Sir, or latch.

Q. To latch or lock, which? A. Yes, Sir; latch it or lock it, just as you choose.

Q. You don't know whether you did it that night or not? A. No; I rather think I did though.

Q. After Mr. Beecher came down did you take the key out and put it in your pocket? A. No, Sir; I did not.

Q. You did not do that? A. No, Sir.

Q. After Mr. Beecher came down and you went with him to Mr. Tilton's house, on the way there, did you again talk about Mr. Bowen? A. Yes, Sir.

Q. What was the substance of your conversation in regard to Mr. Bowen on your way to Tilton's house? A. Told him again that I thought Mr. Bowen was a treacherous man. I said to Mr. Beecher "Bowen promised to sustain Mr. Tilton in those charges, and he goes to you, according to what you have said to me, and



promised to be your friend. Now, I think he is treacherous toward both of you, in having repeated the stories that he did to Tilton, and in having said what he did to you after he made those—he is treacherous to Tilton."

Q. Were the stories further talked of then about Mr. Tilton? A. No; reference was made to them, that is all.

Q. Did Mr. Beecher go into detail at all about the stories that Mr. Bowen had talked about Mr. Tilton? A. No, Sir, not on that occasion.

Q. Then when you were going from your house back to his house again, did you then again talk about the stories of Bowen? A. Yes, Sir; the talk was substantially the same, Sir.

Q. And no advance made whatever; did you simply repeat, for the third time, Mr. Moulton, the stories about Bowen without adding anything, any new feature to the conversation?

Mr. Beach—No stories about Bowen that I know of.

Q. I mean about Mr. Beecher. A. He may have altered the phraseology, but I don't think anything was added to the substance; there was nothing to add that I know of.

Q. Was there anything said in that interview about the stories in regard to Mr. Tilton? A. No.

Q. What? A. No, Sir. You are talking now about on the way from Clinton-st. to Mr. Beecher's house?

Mr. Tracy—Yes, the last time you saw him. A. Yes, Sir.

Q. Now, did you leave Mr. Beecher after having had three interviews with him on that night? A. Yes, Sir.

Q. Did you leave him without expressing any opinion as to the truth or falsity of the stories which Mr. Bowen had told Mr. Beecher about Mr. Tilton? A. I don't think I expressed any opinion as to the truth or falsity that night, Sir.

Q. Do you remember that you did not? A. I should say that I remembered that I did not.

Q. No? A. That is the best of my recollection, Sir.

Q. Did you know what the stories were? A. No, I did not know what stories Mr. Bowen had told Mr. Beecher.

Q. Did you know what stories had been told Bowen about Tilton? A. No; I did not know.

Q. You did not know? A. No; I did not know.

Q. Didn't know any of the stories that had reached Mr. Bowen's ear about Mr. Tilton? A. No.

Q. From any source? A. No; except in a general way; no names.

Q. Well, did you know; in a general way, did you know? A. Yes, Sir.

Q. What did you know in a general way?

Mr. Beach—That is objected to.

Mr. Evarts—The witness said that he didn't know names.

Mr. Beach—What if he did know the stories; are they by this witness to prove stories against Mr. Tilton that he has heard from other parties?

Judge Neilson—No; the only ground of this being admissible would be that it is part of a conversation into which you may have inquired.

Mr. Evarts—It is the subject of future evidence concerning it which we cannot give at the same breath.

Judge Neilson—I don't know about that. I think he may answer this question as further illustrating what had been said.

[Question read by TRIBUNE stenographer.]

Mr. Beach—Does your Honor permit him, under that question, to repeat stories?

Judge Neilson—I don't think they ask him to repeat stories.

Mr. Beach—Why, they ask what they were; I suppose that is asking to repeat them; and they are stories that he may have heard from John, Dick or Tom in the street.

Judge Neilson—Well, the question should be amended so as not to include that.

Mr. Evarts—If your Honor please, it is the state of knowledge in the witness's mind as to what the stories were concerning which he talked to Mr. Beecher.

Judge Neilson—Now, this is the point concerning which the objection is made; that the question may call for stories, not those, perhaps, referred to in the conversation with Mr. Beecher, but stories repeated or mentioned by other people outside. The question is, Did he know what the stories were, to which reference was made in his conversation with Mr. Beecher?

Mr. Evarts—One moment; because we do not wish to transcend any of the rules of evidence; nor do we wish to bring in unnecessarily the talk of other people. This witness has testified that, during the conversation with Mr. Beecher on that night of the 30th, Mr. Beecher referred to stories that Bowen had told him to the prejudice of Tilton, in which he, Beecher, had sympathized; and this witness had expressed his views that Mr. Bowen was treacherous to both of them, etc., we won't repeat that. Now we have endeavored to learn from this witness, whether or no the character of those stories, or the details of those stories, were made the subject of conversation with Mr. Beecher, which he has satisfied us about, or recollects only what he has stated. Now we ask him whether he knew, at the time that he was talking, what those stories were.

Judge Neilson—This is admissible, if he learned it in that conversation; otherwise, not.

Mr. Evarts—Why, he did not learn it from Mr. Beecher.

Judge Neilson—Well, then, it is not admissible.

Mr. Evarts—But they talked about the stories that had passed through Mr. Bowen to the prejudice of Mr. Tilton. Now, we ask him whether he knew what these stories were at the time that he was talking with Mr. Beecher. They were talking about those stories; we ask him whether he knew what the stories were.

Judge Neilson—As disclosed in that conversation?

Mr. Evarts—Well, we don't ask him that.

#### TILTON'S ALLEGED IMPROPRIETIES.

Mr. Tracy—I will ask the question and take your Honor's ruling upon it. [To the Witness]—Did you know from any source, at the time you were talking with Mr. Beecher about the stories that Bowen had told him, what those stories—told him about Tilton—what those stories were?

(Objected to.)

Judge Neilson—That is ruled out if it is derived from other sources; admitted if it is derived from his conversation with Mr. Beecher.

Mr. Evarts—We except to your Honor's ruling.

By Mr. Tracy—Didn't you know from Mr. Tilton what the

nature of the stories were that had reached Bowen? A. I had heard from Mr. Tilton something about it; yes, Sir, I think I had.

Q. Now, answer my question. Didn't you know from Mr. Tilton what the nature of the stories were that had reached Mr. Bowen concerning him?

Mr. Fullerton—Now, if the Court please, your Honor will see that it is quite impossible for him to answer that question. He might guess it out, or surmise it, but he has no positive knowledge upon that subject, because Mr. Tilton did not know what communication Bowen had made to Mr. Beecher.

Mr. Tracy—I will ask him that.

Mr. Fullerton—You are interrupting me improperly, however, that is what you are doing; and your Honor will perceive that this witness could not learn a fact from Mr. Tilton which Mr. Tilton himself did not know; and, therefore, he cannot answer the question, except by mere guesswork.

Judge Neilson—He is not to answer by guesswork; if he answers at all he must answer in reference to what Mr. Tilton told him.

Mr. Fullerton—Your Honor will perceive, from the attitude of the case at present, that it is impossible for him to know; he had not learned it.

Mr. Tracy—My question—

Mr. Fullerton—Interrupting again improperly.

Mr. Tracy—I have a right—

Mr. Fullerton—Your Honor will perceive that Mr. Beecher did not convey the information to him. Mr. Tilton did not know what Bowen had said to Beecher. He therefore could not learn it from Tilton. Therefore the witness cannot answer the question, your Honor will see.

Mr. Beach—Will you allow me to add, Sir, the question is, "What stories did Mr. Tilton tell you had been communicated to Mr. Bowen, or were known to Mr. Bowen, concerning him, Mr. Tilton?" Now, the witness has already sworn that he did not know what stories Mr. Beecher referred to as having been told by Mr. Bowen to Mr. Beecher. Where is the evidence that the stories to which Mr. Tilton referred in his communication to Mr. Moulton were the stories which Mr. Bowen communicated to Mr. Beecher, and which Mr. Beecher referred to in the conversation with Mr. Moulton? There is an entire disconnection between them; the stories are not the same—do not appear to be the same. Now, it may be possible, Sir, it may be possible that this, as a declaration of Mr. Tilton, a party to the action, may be admissible in another connection and for another purpose, but not as throwing any light at all upon the stories which were referred to in the conversation between the witness and Mr. Beecher.

Mr. Evarts—Now, if your Honor please, Mr. Tilton is the party plaintiff in this suit, and we propose to show, if we are permitted to do so, and we have no doubt your Honor will permit us—under the rules of evidence—the relations of Mr. Tilton and of Mr. Moulton in this matter to the affairs of Mr. Tilton, so far as they are pertinent to this issue. We are now asking him whether Mr. Tilton informed him what the stories were that had been told to Mr. Bowen about him, Tilton. Now my learned friend says that

that don't prove that they were the same stories that were told to Mr. Beecher. It does not, of course; but it proves what the stories were; and then, when we prove by another witness what the stories were that were told to Mr. Beecher, then we shall have seen whether they are the same stories or not.

Judge Neilson—Repeat that question to the witness.

[Question read by THE TRIBUNE stenographer.]

Judge Neilson—Now, he can answer that—that he did know, or did not, I think. How is that?

The Witness—I was not paying attention to the question.

[Question again read.] A. I think Mr. Tilton told me, Sir, something about it himself.

Q. What did he tell you? A. He told me, as near as I can remember. Sir, that Mr. Bowen had mentioned a story concerning a transaction at Winstead, Connecticut.

Q. What did he say about it—what did Bowen tell him about it? A. I don't remember the details of it.

Q. What did Tilton tell you that Bowen said about that Winstead transaction? A. That he was at Winstead with a lady, and had acted improperly with her, and that—I can't clearly separate between two stories; one that Bowen told me—whether Bowen told me, or whether Tilton: that is all that I distinctly remember that Mr. Tilton told me—which Mr. Bowen told me afterward, Sir, himself, I think.

Q. Is this all that Mr. Bowen told you about the Winstead matter? A. Yes, that is all; all I remember.

Q. You say that Mr. Tilton told you that the story was, he acted improperly toward a lady; how improperly? A. I don't know. Stopped at the—

Q. What was said? A. I don't remember anything more, Sir, than what I have said.

Q. You don't think Mr. Tilton specified? A. No.

Q. How his conduct was improper—supposed to be improper—toward the lady at Winstead? A. No.

Q. Did he name the lady? A. No, Sir.

Q. Did he name the occasion? A. I think he said that Bowen told him when he went up there lecturing.

Q. Now, didn't Mr. Tilton tell you that the story was circulated about him that he took a lady there not his wife; took a room at the hotel and took bedrooms that were adjoining and communicating? A. No.

Q. He didn't tell you that? A. No.

Q. He didn't tell you that that was the story? A. No.

Q. Well, what other story did Mr. Tilton tell you had reached Bowen? A. I don't remember any other distinctly.

Q. Don't remember any other? A. No; the language which he used to me, as nearly as I can recollect, was this—

Q. Well, we have not asked you—well, let us have it. A. That Bowen had said that stories had come to him concerning Mr. Tilton's conduct with women, and that he cited this Winstead story. That is the story, as I remember it, that Tilton told me.

Q. And didn't he cite others? A. No, sir.

Q. About his conduct with women—now, when was it that Tilton told you that? A. I think, sir, that it was anterior to December 30th.



Q. Was it anterior to December 26th?

A. No, Sir; I don't think it was.

Q. Was it on the 26th? A. No, Sir.

Q. Was it on the 27th or 28th? A. Don't remember; it was between December 26th and 30th, somewhere.

Q. Do you know where he told you that? A. No, Sir; I don't remember.

Q. Nor when? A. No.

Q. Did he tell you that the interview at Bowen's house on the 26th was concerning those stories which Mr. Bowen had heard? A. He told me those stories as having been told to him by Bowen at that interview.

Q. And did he also tell you that the object of that interview was to enable him to explain those stories to Mr. Bowen, if he could? A. I think he told me that that was the purpose of that interview, Sir.

Q. And didn't he also tell you that his contracts with Bowen were threatened unless he could explain those stories? A. No.

Q. He did not—what did you understand, then, that he was to explain them for, if it was not to save his contracts with Bowen?

Mr. Beach—Well, what he understood is not important.

Mr. Tracy—I think we are entitled to that on cross-examination, what this witness understood.

Judge Neilson—No.

Mr. Tracy—Your Honor will note an exception.

Mr. Tracy—Now, when Mr. Beecher told you, on the 30th, that Mr. Bowen had repeated, to him certain stories concerning Mr. Tilton, in which he, Mr. Beecher, sympathized, didn't you understand that those were the same stories that Mr. Tilton had, previously to that night, told you had come to the ear of Mr. Bowen?

Mr. Beach—Objected to.

Judge Neilson—I think we will take that answer. Say yes or no, Sir.

[Exception by plaintiff.]

A. Yes; I supposed they referred to the same.

Q. You suppose they referred to the same? A. Didn't know any other.

Judge Neilson—To Mr. Tracy—To a gentleman of such large experience as yourself, I feel it hardly necessary to suggest that you do not repeat what the witness says; it adds to the volume of the testimony.

Mr. Tracy—And yet you made no explanation to Mr. Beecher concerning those stories on that night? A. No.

Q. So far as you know, did you leave Mr. Beecher with the impression that you believed those stories to be true?

Mr. Beach—Objected to, Sir.

Judge Neilson—I think he may answer that.

Mr. Beach—Why, Sir—well, I won't argue against your Honor's decision.

A. No, I don't think I left him with that impression.

Q. Did you say anything to remove that impression? A. Yes, Sir.

Q. What? A. That Bowen was a treacherous man, and on account of his treachery he ought not to be believed.

Q. Ought not to be believed? A. Yes. I didn't say that he

ought not to be believed on account of his treachery—it was through the use of that language that I left the impression.

Q. That you meant to leave that impression? A. Yes, Sir.

Q. Then, when you told Mr. Beecher that you thought Bowen a treacherous man, you did intend that he should understand that you thought he should not believe against Tilton the stories which Bowen had told him? A. Yes; I did not think that they were—

Q. And you said it for that purpose? A. Not wholly for that.

Q. Well, that is one of the purposes for which you said it? A. Part of it.

Q. Now, how did you understand Mr. Beecher's reply, that he thought so too, as assenting to that view?

Mr. Beach—Are we to have the witness's construction of language?

Judge Neilson—No.

Mr. Evarts—On the cross-examination, if your Honor please, as I suppose by well-settled rules of examination we are not obliged to take a witness's words as ending an inquiry. We have now got, at the end of half an hour, at the very truth that we tried to get at by a simple question half an hour ago.

Mr. Beach—Well, that proposition I dispute.

Mr. Evarts—Well, if your Honor will recur to the question your Honor ruled out, it was exactly to that point, whether what he said to Mr. Beecher was intended to convey to his mind the idea that the stories that had come to Bowen about Tilton were true or untrue.

Mr. Beach—The gentleman has got at it, then, by a change in your Honor's ruling, because you certainly ruled out that question and if you have admitted it now you have admitted it contrary to that decision.

Judge Neilson—I think the matter came in a little different aspect.

Mr. Evarts—That shows what a cross-examination is for and what its license is.

Judge Neilson—I think I will rule out this question.

Mr. Tracy—Your Honor will note our exception.

#### MR. MOULTON'S CAPACITY FOR FRIENDSHIPS.

Mr. Tracy—Mr. Moulton, when you left your own house on the night of the 30th to go to the house of Mr. Beecher, you left it as the friend of Mr. Tilton, did you not? A. Yes, Sir.

Q. Called into this controversy by him? A. Yes, Sir.

Q. To aid him? A. Yes, Sir.

Q. You were not at that time the friend of Mr. Beecher? A. I was not his enemy; I was not his personal—

Q. I didn't ask you that? A. What do you mean by "friend" then?

Q. Don't you understand? A. I don't exactly in the way that you put the question.

Q. Well, I put the question again, Sir, and I shall leave you to answer it as you understand it. Were you, at the time that you left your own house, on the night of the 30th, the friend of Mr. Beecher?

Mr. Beach—Now, I submit that the answer is perfectly proper.

Mr. Evarts—We haven't heard it yet.

Mr. Beach—Yes; you have had it.

Judge Neilson—State how the fact was in your own way.

A. I had known—I had met Mr. Beecher, Sir; I was not his enemy; I was not his close, personal, intimate friend.

Judge Neilson—That answers it sufficiently.

Q. You went from your own house as the friend of Tilton, and as soon as Mr. Beecher got into the street, as I understand you, you proffered your friendship to him in this matter? A. I did.

Q. And services? A. Yes, Sir.

Q. Did you do that with Mr. Tilton's consent and knowledge? A. I had not conferred with him about it.

Q. I didn't ask you that; I asked you whether you did it with his consent or knowledge? A. No, neither.

### A SHARP CROSS-QUESTIONING.

Q. You did it without his knowledge; the letter that you carried to Mr. Beecher on that night, was it in an envelope? A. I didn't carry a letter to Mr. Beecher, Sir.

Q. On the night of the 30th? A. I had a letter in my pocket.

Q. Well, you had a letter in your pocket? A. Yes, Sir.

Q. Was that letter in an envelope? A. I don't remember whether it was or not.

Q. Do you know whether it was addressed—there was an address on it directed to the Rev. Henry Ward Beecher? A. I know there was not.

Q. There was not? A. No.

Q. Did you deliver that letter to Mr. Beecher that night? A. No, Sir.

Q. Did he ever see it, to your knowledge? A. No, Sir.

Q. Now we will come to the night of the 31st. What time of night did Mr. Tilton leave your house on the night of the 30th? A. I think he left quite late, Sir.

Q. When did you see him again? A. I saw him on the morning of the 31st.

Q. On the morning of the 31st? A. Yes, Sir.

Q. What time in the morning? A. Before I left for my business, Sir; somewhere between seven and nine o'clock, I should think.

Q. Where; at your own house? A. Yes, Sir.

Q. Did you go to your business that morning? A. I did; yes.

Q. What time? A. Between seven and nine.

Q. From your own house? A. I don't remember, Sir, whether I went to Mr. Tilton's house before I went to my business, or afterward.

Q. Don't remember that? A. No; sometimes I went to the docks and returned.

Q. I didn't ask you what your habit was; I was inquiring what you did that morning. Now, you did go there sometime during that day? A. Did go where?

Q. To Mr. Tilton's house? A. My impression is that I did; yes, Sir; and my recollection, to the best of my recollection, is that I went there that morning.

Q. Either before or after you went to the docks? A. My recollection is that I did.

Q. Who went with you? A. I don't remember.

Q. Did you see Mrs. Tilton? A. I think I did; yes, Sir. My recollection is that I went to the house and saw Mrs. Tilton.

Q. Where did you see her? A. In her room, I think, Sir.

Q. In her room? A. Yes, Sir.

Q. Sick room? A. Yes, Sir; I don't know whether it was a sick room or not. I saw her.

Q. Was she in bed or not? A. I don't remember.

Q. Don't remember whether she was in bed or not? A. No.

Q. Do you know whether she was sick or not? A. I think she was ill.

Q. Well, was she in bed ill? A. I don't remember.

Q. Do you mean to say that you don't know whether she was sick or well? A. She was ill, I think, Sir.

Q. You say she was ill? A. She was ill—

Mr. Fullerton—"She was ill, I think."

Q. Do you mean to say whether she was ill or not? A. She was ill, I think, Sir.

Judge Neilson—That is the third or fourth time he has answered it.

Mr. Beach—Well, he is not a physician.

Mr. Evarts—If your Honor please, cannot you tell whether a man or woman is sick, without being a physician?

Judge Neilson—Not always.

Mr. Evarts—Not always, but sometimes you can.

Judge Neilson—He says: "She was ill, I think."

Mr. Evarts—We know how sick she was, and how she was disposed at the time; and if this witness cannot tell us whether he knows or remembers whether this woman was sick or well at that time, then he may not remember other things.

Judge Neilson—Well, Sir, my own judgment is, that when a layman says of the lady he visited, that "she was ill, I think," it is a fair answer and a full answer. You may ask the witness, undoubtedly, why he thinks she was ill, what was the appearance—

Q. Who was with you in her room? A. I don't remember.

Q. Do you mean to say that you don't remember whether anybody at all was with you, or whether you were alone? A. I don't remember, Sir.

Q. Was her husband with you? A. I don't remember that he was.

Q. Do you remember that he was not? A. I don't remember that he was not.

Q. Did he go to the house with you? A. I don't remember that.

Q. Do you know how you went to that house? A. If I went to the house I rode.

Q. Did Mr. Tilton ride with you? A. I don't think he did.

Q. Do you remember that he did not? A. To the best—the best of my recollection is that he did not.

Q. Was he in the house when you went there? A. I don't recollect.

Q. Whether he was or not? A. No.

Q. From the time you went in, until the time you came away, you don't recollect of seeing Mr. Tilton there? A. I do not.



Q. And don't know that he was there? A. Don't recollect that he was.

Q. Or that he was not? A. Don't recollect that he was there.

Q. Well, do you recollect that he was not? A. I don't recollect that he was there.

Q. Was that letter written in your presence? A. Don't remember whether it was or not.

Q. Don't remember whether it was or not? A. No, Sir.

Judge Neilson—Why repeat that, General, you are burdening the case.

Mr. Tracy—Excuse me [to the witness]. From whose hand did you receive that letter? A. I think I received it from the hand of Elizabeth directly.

Q. Do you know whether you did or not? A. It was either given to me directly by Elizabeth Tilton, or it was sent to me by a messenger to my house. My recollection is that I went to the house that morning—I am undertaking to give my recollection.

Q. Now, I understand you to say that you don't know whether you went to the house and got this letter from Mrs. Tilton, or whether it was sent to you by a messenger to your house? A. I am giving my recollection, Sir; I think I went to the house; to the best of my recollection I went to the house, Gen. Tracy.

Q. Will you say that that letter was not delivered to you by the hand of Theodore Tilton? A. I don't recollect that it was.

Q. Will you say that it was not? A. I won't say that it was not.

Q. What time of evening was it when you left your house to go to Mr. Beecher's on the 31st? A. It was after seven o'clock in the evening.

Q. After seven o'clock? A. Yes, Sir, I should think it was. The best of my recollection is it was after seven o'clock.

Q. You found Mr. Beecher on the evening of the 31st? A. Yes, Sir.

Q. Where? A. He was not at home, Sir, when I called at the house?

Q. Well? A. And a messenger from his house, somebody from his house, came after me and said that his mother, I think, knew where he was; I think it was one of Mr. Beecher's sons, and I went back and waited for him. He came.

Q. Where did you have your interview with him? A. Upstairs in the back room, Sir, I think.

Q. Second or third story? A. I should think it was the second story, Sir. I won't be certain about that.

Q. In the study? A. Don't remember that it was the study.

Q. In the bedroom? A. My impression is, Sir, that it was; my recollection is that it was.

Q. Now, how did you commence that interview with Mr. Beecher that night? A. Well, I said to him that I thought that he would consider the subject of it a strange one; that his judgment would say that it was rather a strange interview; and I recalled something of the conversation, I think, of the previous evening to him, and I said to him, "You got Theodore's permission last night to go down and see his wife, and you procured from her a retraction of her confession, and you procured what I must term a lie, and I think you are

gully of great meanness in doing that; I think you are." I told him that I had received a note from Theodore in the morning, asking back the confession of his wife, and that I had seen Theodore, and that he was very angry about Mr. Beecher's conduct—about his conduct—and I said: "Mr. Beecher, I didn't see much of the guidance of God in what you did, but at the same time, there may be a Providence in it after all. I have come for that retraction. I think you had better give it up to me. I will burn both the confession and the retraction in your presence, if you choose, or I will hold both;" and I read to him the letter which Elizabeth Tilton had either sent or given to me, and I read also a letter which Theodore Tilton had given to me, dated "Midnight," in which his wife informed him of the, whatever you call it, recantation.

Mr. Evarts—Those letters are in evidence

The Witness—I believe so, yes; and he said to me that this recantation would be his only, would be the only defense of his family—I am giving his language as nearly as I recollect it, Sir—would be the only defense of his family, in case he was attacked; and I said to him: "Mr. Beecher, I don't see how you have erred as you have; I don't understand it; you have had criminal connection with Mrs. Tilton, and you go down and you get this paper; I don't see how you could have performed two such acts. Mr. Tilton's disposition last night, when I went home, or when I saw him after going home, was peaceful. He said that no matter what might come to himself, he would protect his wife and family, intended to do that." And Mr. Beecher then said to me with great sorrow, weeping, that he had loved Elizabeth Tilton very much; that through his love for her, if he had fallen at all, he had fallen; that the expression, the sexual expression of that love, was just as natural in his opinion—he had thought so—as the language that he used to her; that if he had fallen at all, he had fallen in that way, through love and not through lust, or words to that effect, and he said—

Mr. Tracy—Now, witness, excuse me.

The Witness—And he said, "This will be my defense; my only defense, in case I was attacked, but with you I throw myself upon your friendship and upon what I really believe to be your desire to do the best for all parties;" and as I was leaving him, he said, as nearly as I can recollect—afterward the language made great impression upon me—that he felt that he was upon the brink of a moral Niagara, with no power to save himself, and he wanted me to save him, and that is the substance of the interview as nearly as—

Mr. Morris—Wanted you to save him? A. Yes, Sir; and he gave me back the retraction.

Q. Now, will you explain to the Court and Jury how it happened that in repeating Mr. Beecher's remarks, you first said that he said his expression toward Mrs. Tilton—correcting yourself, you said his sexual expression toward Mrs. Tilton—will you tell us how it happened—intercourse, I mean; intercourse—expression. Will you explain to the Court and Jury how it was that you made the slip? A. I don't understand the slip. If you will explain it, Sir?

Q. In repeating Mr. Beecher's language on this occasion, you first said that—

Mr. Shearman—He considered his expression—then he stopped and said, his "sexual expression of his love for Elizabeth." Those were the exact words.

Mr. Tracy—Can you tell how that happened—why you repeated it in that way? A. Here, in this —?

Mr. Tracy—Yes, Sir. A. Well, I dropped a word; that's all, Sir.

Q. That is your answer; you dropped the word? A. I meant to say precisely what I did say—his sexual expression—that his sexual intercourse—

Q. Are you aware that you made exactly the same mistake on your direct examination? A. No.

Q. You are not aware of that fact? A. No, Sir. [Book produced and referred to by Mr. Tracy.]

#### A PRECISIAN CORRECTED.

Mr. Morris—Now, if that is to be read, I ask that it be read from the original stenographic notes, because they are incorrectly printed; and that is not the only incorrectness.

Judge Neilson—Errors will creep into the press, where they are —

Mr. Morris—There is one in this case.

Mr. Evarts—Does anybody say there is an error here?

Mr. Morris—Yes, Sir, I do; in the printing of it.

Mr. Evarts—Well, where is your proof of it?

Mr. Morris—Well, I do say so.

Mr. Evarts—Show us the proof.

Mr. Morris—I call then for the original stenographic notes. The stenographer called my attention to it himself, and I saw that it was incorrect, and he said that the mistake had been made in the THE TRIBUNE office; that his manuscript was correct, and the production of the notes will show that that was incorrectly printed.

Mr. Evarts—It is certainly quite competent for counsel on either side to appeal to the original stenographic notes.

Judge Neilson—This correction is one that can be made in the re-direct examination.

Mr. Evarts—Or the stenographer can be produced.

Mr. Morris—But we object to their assuming that the printing is correct in reference to this testimony of the witness, because it is not.

Mr. Tracy—Well, it is very clear he made the same mistake now.

Mr. Beach—This may as well be understood. We say there is an incorrect report in THE TRIBUNE on that point. Now, I wish to say, Sir, as this subject has been suggested now, that at the commencement of this trial it was named to me by one of the counsel on the other side that the report of THE TRIBUNE should be adopted as the official report of the trial; and I see that THE TRIBUNE stenographer, as I understand—or that a stenographer—

Judge Neilson—The one who is assisting THE TRIBUNE stenographers is the official stenographer of this Court, and is now acting as far as he can in connection with them.

Mr. Beach—Yes, Sir; we certainly intended to make no reflection upon them, Sir, or their accuracy. But I wish to state to your Honor, that some reporters, whether the official or not the official stenographers, have mentioned to the counsel for the plaintiff that there are several inaccuracies in THE TRIBUNE report of the testimony. And it is through that representation made by the stenographers that we have raised the question which is now presented to your Honor; and I continue observations upon it for another purpose. It seems, Sir, upon both sides the report in THE TRIBUNE has been adopted as the official report of the proceedings upon this trial. When we find that the report in THE TRIBUNE, in matters which we deem essential to a true representation of this trial, varies from the stenographer's notes, and, when that is brought to our attention by the official stenographer, we wish to enter a protest to your Honor against accepting THE TRIBUNE report as the official report of this trial, that we may not be under any misapprehension afterwards. And, I may be permitted to say, Sir, in addition, that, having studied with some care the report of the trial as it has appeared in THE TRIBUNE, knowing that it had been designated in this way by mutual consent as the official report of this trial, I have been very much dissatisfied by the fact that there are comments prefixed to the report of the trial in THE TRIBUNE which are unfair and unjust towards the plaintiff and which make, I think, false inferences and false statements in regard to the course of the trial. Your Honor will observe that to every report of the evidence in this case in THE TRIBUNE there is prefixed a sort of summary or syllabus giving representations in regard to the object of counsel, the results accomplished by counsel, and representations in regard to the character of the evidence and the effect of the evidence, whether prejudicial to one side or the other. I am unwilling, Sir, that these comments should be presented in what is accepted as an official report of the trial, and attached to the statement of the evidence, incorrect in many of its particulars.

Judge Neilson—That forms no part of the report of the case, of course.

Mr. Beach—No, Sir; but your Honor requested, with great propriety (and we supposed that the courtesy, at least, of the official paper reporting this trial would accede to that request), that the report should not be accompanied by editorial comments; and, if so, Sir, I insist that they shall be at least partial, and not tinctured and poisoned by the prejudice of the editorial department of that paper.

Mr. Evarts—Impartial.

Mr. Beach—Impartial, Sir, I mean.

Mr. Evarts—So that, we may make errors even ourselves. I wish to say one word, if your Honor please. The general discussion about reports of newspapers does not seem to be very pertinent, unless some application is to be made to your Honor in the matter.

Mr. Beach—Why, it is an application, or a statement, that we do not accept the report of that paper as the official report.

Mr. Evarts—No one has ever asked THE TRIBUNE report to be accepted as an authority, superseding the official report.



Mr. Beach—Well, you are mistaken.

Mr. Evarts—I have not heard it.

Mr. Beach—Well, there are some things about which you have never heard.

Mr. Evarts—Now, some inquiry has arisen here as to whether, in our dealing with this witness in our legitimate manner, we may not have adopted a report in *THE TRIBUNE*, as a report (as it would presumptively be accepted by all of us) correct in this very matter in question. If the objection is made that the report in *THE TRIBUNE* is not such as we assumed, not having been the testimony in fact, then let the stenographic report that is official be produced before us. We never shall arrive at a conclusion whether there is a discrepancy between the official report and *THE TRIBUNE* report, much less as to which is the more correct, unless we have the two things before us. Now, I think my learned friends, if they pursue the matter further, will find that the official report gives the facts as we have assumed them in our cross-examination of the witness.

Judge Neilson—That may be, Sir, but that particular subject has been exhausted by the examiner, and if there be an error in the use of a word, as assumed by General Tracy, on his cross-examination, that can be corrected on the re-direct, rather than now.

Mr. Evarts—And by producing the official report?

Judge Neilson—Yes, Sir.

The Court here took the usual recess.

The Court met at 2 p. m., pursuant to adjournment. Francis D. Moulton recalled, and cross-examination resumed.

[The last question and answer of the morning session read by *THE TRIBUNE*'s reporter to the witness.]

Mr. Tracy—At what stage of that conversation did you read Mrs. Tilton's letter requesting a return of the retraction?

Mr. Morris—The Exhibits are not here; they are over at the office.

Mr. Tracy—We cannot get along without them.

Mr. Morris—They will be here in a few minutes.

Mr. Tracy—Do you remember whether that letter was in an envelope? A. I think it was in an envelope, addressed to me, Sir.

Q. Have you got the envelope? A. I don't know, Sir, whether it is among the papers or not. All the papers that I have got I have handed to Judge Morris.

Q. Do you know whether the direction of that envelope was in Mrs. Tilton's handwriting? Well, have you got the envelope? Can you get it? We would like it if you have it.

Mr. Morris—We haven't the envelope; I have never seen it.

Q. Do you know what became of it? A. I suppose it was torn off and destroyed, Sir.

Q. Do you say it was; have you any recollection on that subject? A. No distinct recollection; if the envelope is not there it was destroyed—if it is not among the papers.

Q. You don't know whether it is among the papers or not? A. I don't know, Sir; I don't recollect whether it is or not; I have handed Judge Morris all the papers that I have got.

Mr. Evarts—Your Honor will remember that we referred to the fact that all these notes and letters were produced without

envelopes, and yet they showed that they must have been in envelopes, that is, they were not complete sealed or closed papers, and we were told that the envelopes were all in hand and we could have access to them.

Mr. Beach—Oh! no.

Mr. Evarts—I mean those which you had.

Mr. Beach—Yes.

Mr. Evarts—I don't mean to say that you said they had all been preserved, but that you had some envelopes, and whatever you had you had here.

Mr. Morris—Yes.

Mr. Evarts—Now, we would like to see if there is this envelope.

Mr. Beach—We tell you that there is none.

Mr. Evarts—Has it been searched for?

Mr. Morris—Yes, it has; and we have not got it.

Mr. Evarts—Have you searched for this? We never asked you for it before.

Mr. Beach—You are cross-examining Mr. Morris now.

Mr. Evarts—No.

Mr. Morris—I say we have; and we have not got it.

Mr. Evarts—Very well.

Mr. Morris—I have never seen it.

Q. At what stage of the interview with Mr. Beecher on that night did you read to him that letter? A. I think I read it to him after I read to him the letter of Mrs. Tilton to her husband informing him of the fact.

Q. You read, then, what we call the explanation of the retraction, first? A. Yes, Sir.

Q. And then read her letter requesting its return? A. Yes, Sir, after that, I think; that is the best of my recollection.

Mr. Tracy—I want that letter.

Mr. Morris—I can give the printed one; there it is [handing Mr. Tracy the book.]

Mr. Evarts—Well, you will have the original here?

Mr. Morris—Yes, Sir.

#### MR. BEECHER'S HARD ALTERNATIVE.

Q. I understand you to say that you told Mr. Beecher that if he would surrender that retraction you would destroy the accusation—what I call an accusation and that you call Mrs. Tilton's confession—you would destroy that paper and the retraction in his presence.

Mr. Beach—No, that was not the statement.

Judge Neilson—He says so.

Mr. Fullerton—No. I beg you Honor's pardon!

Mr. Evarts—We understand him to have said so.

The Witness—I said to Mr. Beecher that if Mr. Beecher desired—

Q. You would destroy it? A. Yes, Sir.

Q. What did Mr. Beecher say to that? A. He said that if any accusation was made against him that this retraction would be the only defense which his family would have—words to that effect.

Q. And then did you tell him that if you did not destroy you would keep them both together? A. I told him I would keep the retraction and keep the confession; yes, Sir.

Q. So that one should never be seen without the other? A. So that one should never be seen without the other.

Q. You said you would keep them together? A. I told him I would keep both; I did not use the word "together."

Q. Preserve both? A. Preserve both.

Q. Didn't you mean by that to be understood that they should not be separated? A. I meant that I should keep them both in my possession.

Q. Didn't you mean by that to be understood by Mr. Beecher that those two papers should never be separated?

Mr. Beach—Why, Sir, that does not convey any intimation to the witness of what the counsel desires to be answered. They were separate papers. Does he mean that they should be annexed together and never detached, the one from the other, or that the one should never be shown without the other? It is impossible to answer a question of that character without more discrimination.

Mr. Evarts—We understand all that. This witness has said, "I said to Mr. Beecher, I will destroy them both or keep them both," and Mr. Beecher said, "This retraction will be the only evidence against the charge." Now the question is, "Did you mean by saying that you would keep them both that you would keep them so that one did not appear without the other?"

Mr. Beach—Well, that is well enough.

Judge Neilson—How is that, Mr. Moulton? Say yes or no to that? A. I cannot answer yes or no without an explanation to that. That I would keep them both—I said that I would destroy them both in his presence if he desired, or I would keep them both; I would keep both papers; not necessarily together, but keep them both safe, not to be made public, either of them. That is my understanding, Sir.

Mr. Tracy—Did you intend to be understood that you would keep those papers, so that one should not be shown without the other, or should not appear without the other?

Mr. Beach—The question is, Sir, what the witness meant at that time?

Mr. Tracy—Yes, Sir.

Judge Neilson—Answer that.

A. I meant to keep both of those papers sacredly; the recantation for Mr. Beecher's sake, and the confession for Mr. Tilton's sake, who had given them to me. That is what I meant. My idea was, when I said that—my idea was that this confession never should be made against Mr. Beecher without his having the recantation to meet it with. That is what I meant.

Q. And that they should not be shown and separated, so that one should appear without the other?

Mr. Beach—That is not a question.

Mr. Tracy—Yes, Sir.

Mr. Beach—No, that is not a question; that is a declaration of the counsel.

Q. Did you so mean to be understood that one of these papers should not be shown or appear before the public without the other? A. I meant that Mr. Beecher's recantation which he handed me should be used by him in his defense in case an attack was made upon him upon the basis of the other paper. That is it, Sir; if the other paper was used he should have his to use against it. I try to explain it, Sir.

Q. Didn't you also mean that that paper should be preserved so that if any attack was made upon him the recantation should appear to be a retraction of the accusation.

Mr. Beach—That is arguing, Sir, in regard to the effect of the paper.

Mr. Tracy—No, Sir.

Mr. Beach—Yes, Sir. I object to that question.

Judge Neilson—Let the stenographer read the question.

THE TRIBUNE stenographer read the question, as follows: "Didn't you also mean that that paper should be preserved, so that if any attack was made upon him, the recantation should appear to be a retraction of the accusation?"

Mr. Tracy—Answer the question.

Mr. Fullerton—That is objected to.

Judge Neilson—Let him answer that.

The Witness—I can answer it with an explanation. I meant that they should both be presented together or both be destroyed together.

Judge Neilson—I understood you virtually to say that before, some time ago. [To Mr. Tracy.] Go on, now.

Q. When you offered to destroy those papers in Mr. Beecher's presence had you the authority of Theodore Tilton to make that offer? A. I don't remember that I had.

Q. You had not? A. According to the best of my recollection, I had not.

Q. Do you mean to say that you had not? A. According to the best of my recollection, Sir, I had not.

Q. Then do you mean to be understood as saying that you received from the hands of Theodore Tilton that accusation of his wife against Mr. Beecher, and, having pledged your friendship to Mr. Beecher the night before, you took it to him and offered to destroy it without the authority or permission of Theodore Tilton? A. On my own responsibility I did think that, Sir.

Q. And you would have destroyed it that night? A. Yes, Sir, I would.

Q. Would that have bound Mr. Tilton to any course on the subject?

Mr. Beach—I object to that.

Q. Did you so understand?

Mr. Fullerton—I object to that.

Judge Neilson—I rule that out.

Mr. Evarts—We except, if your Honor please.

Judge Neilson—The witness gives a certain answer, the words of which convey a certain meaning, and it is our business to interpret the meaning of the words used; and you do not need his interpretation.

Mr. Evarts—He has said, if your Honor please, that he did it on his own responsibility.

Judge Neilson—Yes; and in the same connection that he had no authority from Mr. Tilton.

Mr. Evarts—Now, I want to get that distinctly.

Judge Neilson—He has given it. There is nothing gained by repeating it.

Mr. Evarts—If your Honor will allow me, I want to have no escape from the act that had been done. There was nothing in that act that would have bound Mr. Tilton to any suppression, whatever.



Judge Neilson—The paper would have been destroyed; that is all.

Mr. Evarts—I am not discussing what the effect of the thing is. There was nothing in that act, of which he assumed the responsibility, that, by reason of anything that had passed between Mr. Tilton and himself, would have bound Mr. Tilton not to renew it immediately.

Mr. Beach—That is it. It was for somebody else besides the witness to determine that.

Mr. Evarts—Oh! no.

Judge Neilson—Well, we have got this down distinctly and in such a way that it cannot be evaded.

Mr. Tracy—I will put another question, your Honor.

Mr. Evarts—The question is asked and ruled out, and an exception is taken.

Judge Neilson—Yes, Sir.

Mr. Tracy—Did Mr. Tilton know that you bore the letter to Mr. Beecher from Mrs. Tilton? A. My best recollection is that I showed the letter to Theodore, in accordance—

Q. Before going? A. Yes, Sir.

Q. And that letter called for the return of the papers, that they might be burned, did it not?

Mr. Beach—The paper will show for itself.

Mr. Tracy—Well, I am waiting for it.

Mr. Beach—You have got it in print before you.

Mr. Evarts—We want the original.

Q. Now, Sir, did you say to Mr. Beecher that Mr. Tilton knew of this letter from Mrs. Tilton, and knew that you came with it to request the return of that paper? A. I do not remember saying any such thing; to the best of my recollection I did not.

Q. What? A. To the best of my recollection, I did not say that.

Q. Did you tell Mr. Beecher that the object that Mrs. Tilton had in procuring the return of those papers was that they might be burned? A. I read the letter to Mr. Beecher; I do not remember saying anything further than the letter itself.

Q. And you did not tell him whether Mr. Tilton knew of that letter or not? A. I do not remember that I did, to my recollection.

Q. Didn't he ask you? A. I don't recollect that he did.

Q. And yet you say that, on the authority of this letter, you would have taken the responsibility of not only burning the retraction but burning a paper which you had received from the hands of Mr. Tilton that night in the presence of Mr. Beecher?

Mr. Fullerton—I object to that.

Judge Neilson—He does not say upon the authority of that letter.

Mr. Beach—No, Sir.

Judge Neilson—He said he would have done it.

Q. Would you have done it upon the authority of that letter?

Mr. Fullerton—I object to that.

Judge Neilson—He has said he would have done it.

Mr. Tracy—There was no authority in the letter in respect to the burning of it—nothing upon that subject.

Judge Neilson—I think he may answer. Answer, Mr. Moulton; would you have done it under the authority of that letter?

Mr. Beach—What letter do you refer to?

Mr. Tracy—I refer to the letter of Mrs. Tilton asking for the return of these papers, that they might be destroyed, which letter the witness says was shown to Theodore Tilton before he went to Mr. Beecher's house that night.

Judge Neilson—Now, if Mr. Beecher had consented to the destruction of both papers, the question is, whether you would have destroyed them upon the authority of that letter which you had taken there with you, or upon your own individual responsibility? A. That letter would have influenced me somewhat with regard to it.

Mr. Tracy—And the fact that Tilton had seen it, would not that have influenced you also? A. I think my own thought in regard to the transaction would have influenced me more than either.

Q. Now, do you say that you made this assurance to Mr. Beecher, that if he would surrender that retraction to you, and permit it to be destroyed, you would destroy it with the accusation, without having any authority from Theodore Tilton, or knowing from Theodore in any manner whether, if that was done, it was to end both the accusation and the retraction? A. I would have destroyed the papers on the spot, Sir.

Q. I didn't ask you that, Sir. That is not an answer to my question. Will the stenographer read my question?

THE TRIBUNE stenographer read the last question.

A. Yes; I should have done it on the spot without any authority from Theodore Tilton.

Judge Neilson—Your answer "Yes," then, answers the question?

Mr. Tracy—No, Sir.

Mr. Fullerton—No; that would be wrong.

Mr. Beach—The question is not very perspicuous.

Judge Neilson—[To THE TRIBUNE stenographer.] Read the answer.

THE TRIBUNE stenographer read the last answer.

Judge Neilson—Do you wish to add anything to that answer? A. No, Sir; that covers it.

Mr. Tracy—I put the question, whether you made that representation to Mr. Beecher without having any authority from Theodore Tilton? A. I don't recollect that I had any authority from Theodore Tilton.

Q. Then you mean to say that you did make that representation to him without authority?

Mr. Fullerton—He has said over and over again that he had no authority.

Q. Then you mean to say that you did make that representation to him without having any authority? A. Without having any authority.

Q. Then did you know of anything, in case that retraction had been destroyed, that night, which would have prevented Mr. Tilton from renewing the charge the next day? A. Yes.

Q. You did? A. Yes.

Q. What? A. Mr. Tilton's expression to me that he was going to save his family—that he did not want any harm to come to his family. That was my thought.

Q. And that you understood as a declaration from Theodore Tilton that he did not intend to make public this accusation against Mr. Tilton? A. Precisely.

Q. And that you understood from Tilton for the first, when?

A. On the night of the 30th.

Q. Before you went to Beecher? A. No, Sir.

Mr. Tracy—This is the letter. [Reading the letter marked "Exhibit 1."]

SATURDAY MORNING.

MY DEAR FRIEND FRANK: I want you to do me the greatest possible favor. My letter which you have, and the one I gave Mr. Beecher at his dictation last evening, ought both to be destroyed.

Please bring both to me and I will burn them. Show this note to Theodore and Mrs. Beecher. They will see the propriety of this request.

Yours truly,

E. R. TILTON.

Q. Now, did Mr. Beecher on that same evening have any talk with you in regard to the stories which Bowen had told against Mr. Tilton? A. On the evening of December 31st?

Q. Yes. A. Not on the evening of December 31st, I recollect now, Sir.

Q. Is that the way you have always recollected it? A. I think it is.

Q. Please look at the book where I have marked it, and see if that will refresh your memory. [Handing witness the book.]

Mr. Fullerton—What page is that, Mr. Moulton?

The Witness—It is on this book, the 239th page.

Q. Turn over the page also, please, and look at that. [Witness refers to the page indicated.] I will ask you, did not Mr. Beecher tell you on that occasion that he had sympathized with Bowen and had taken sides with him against Tilton? A. He told me—not on this occasion; it was on the evening of December the 30th; that is my recollection now. I think this is a misstatement.

Q. He told you that? A. Yes, Sir; I think this is in error in that respect.

Q. As to the date only? A. Yes.

Q. That it occurred on the evening of the 30th? A. Well, perhaps, I don't understand all of your question. With regard to Bowen he spoke.

Q. Yes; let me have no misunderstanding about it. You now say that you think on the evening of the 30th Mr. Beecher said that he had sympathized with Bowen and had taken sides with him as against Tilton? A. He had taken sides with him as against Tilton?

Q. Yes? A. Yes; that he had taken sides with him as against Tilton, and sympathized with Mr. Bowen's story.

Q. In consequence of the stories which were in circulation in regard to him, and especially the one specific case where he had been informed that Mr. Tilton had had improper relations with a woman whom he named? A. Yes, Sir; that did not occur on the evening of December the 30th; that occurred on the evening of January 1st, if my memory serves me right now.

Q. That part of it occurred on the evening of Jan. 1st? A. Yes, Sir.

Mr. Evarts—The whole of it? A. No, Sir; "And especially of one specific case." My recollection tells me—

Mr. Evarts—It is only a question to get it right.

Mr. Tracy—Your recollection now is that, recurring to what he had told you on the evening of the 30th about having sympathized with Bowen and taken sides as against Tilton, he

added that he did it on account of these stories in regard to a certain woman? A. No; that on Jan. 1st he spoke of this "one specific case;" he spoke of "one specific case" or Jan. 1st.

Q. Now, didn't he on the evening of the 31st, in speaking of that same thing, offer to write a letter to Mr. Bower taking back what he had said in regard to him? A. On the evening of December 31st?

Q. Yes. A. No, Sir.

Q. That occurred, you say, on the 1st? A. Yes, Sir.

Q. When was it that he showed you the draft of letter for that purpose—that he proposed to write Bowen to correct what he had said about that? A. It was either at his house on January the 2d or at my house after January the 2d.

Q. Now, do you mean to say that this letter, a rough draft of it, was not shown you either on the evening of the 31st or on the evening of the 1st of January? A. Yes, Sir; I don't mean to say it was not on the evening—yes, it was not on the evening of the 1st; it was either at his house on the 2d of January or at my house after the 2d of January.

Q. Then that is a part of another conversation that has got mixed here, is it? A. What is a part?

Mr. Beach—Got mixed where?

Mr. Evarts—No matter—

Mr. Beach—Yes, it is matter.

Mr. Evarts—Let him refresh himself before you ask him. We want the facts as they are.

Q. Did he tell you on that evening at any time?

Mr. Beach—What evening?

Mr. Tracy—Either on the 31st or the 1st, and if so, which—or the 30th, that Mrs. Beecher and himself had been expressing great sympathy towards Mrs. Tilton, and taking an active interest with her against her husband? A. Where is that, Sir?

Q. That is on the next page right over, after the signature to the letter? A. I spoke to him on the evening of December 31st, about certain stories that Theodore Tilton had told me that Mrs. Beecher was circulating against him, and to the best of my recollection, Mr. Beecher said to me that Mrs. Beecher received her information from Mrs. Morse, who she believed to be a dangerous woman, and yet her enmity to Theodore Tilton was such that she entered into sympathy, and he sympathized himself with those stories.

Q. When do you say that was—the 31st? A. Yes.

Q. Now, what were those stories which Mrs. Beecher had received, and with which she and Mr. Beecher sympathized? A. I don't remember, Sir, what they were.

Q. Don't remember anything about them? A. I don't remember, Sir, now; no, Sir, I don't recollect what they were.

Q. They were mentioned, were they not? A. I think they were mentioned subsequently; I do not think they were mentioned on that night fully.

Q. Was the nature of them spoken of? A. I do not remember that the nature of them was spoken of on the night of Dec. 31st, Sir.

Q. How were they referred to? A. As stories injurious. I



told Mr. Beecher the stories that Tilton had told me that Mrs. Beecher was circulating against him.

Q. How did you describe them? A. I think as infidelities. I think I may have used the word "infidelity."

Q. What else did you say? A. That is all that I recollect now.

Q. The infidelities of whom? A. Of Mr. Tilton.

Q. Were the names of the persons mentioned? A. No; no names were mentioned that night.

Q. No names mentioned that night at all? A. No, Sir.

Q. What did you say to Mr. Beecher about those stories? A. I told him those stories ought to be stopped.

Q. What else did you say about them? A. I don't remember saying anything else.

Q. Did you tell him that they ought to be stopped because they were false? A. I don't think I said that they were false.

Q. Did you say anything about their truth or falsity? A. I don't think I did.

Q. Did you mean that Mr. Beecher should understand you as saying that these stories should be stopped even if they were true and you believed them to be true? A. No.

Q. Well, then, didn't you say that the stories were untrue and should be stopped? A. No, I did not on that occasion; I don't remember saying that they were untrue.

Q. Did you say anything on the subject, whether they were true, or not? A. I told him that those stories ought to be stopped. That is all that I remember having said. I am giving all that I remember.

Q. And gave no reason whatever why they should be stopped? A. I don't remember that I did, Sir.

Q. Did you intend to leave an impression on Mr. Beecher's mind that those stories were true? A. No, Sir.

Mr. Fullerton—I object to that.

Q. You did not? A. No, Sir.

Mr. Fullerton—That is a form of question very frequently put, and it is improper.

Q. Did you intend to leave upon his mind an impression that you believed them to be untrue?

Mr. Fullerton—I object to that.

Judge Neilson—If he said anything on the subject he can speak; otherwise not.

Mr. Tracy—Then I understand your Honor as excluding the question.

Judge Neilson—Yes, in that way. If he said anything on the subject he can speak about it.

Mr. Evarts—We have had, I think, if your Honor please, this question answered before. You will observe that a witness speaking of a conversation that took place four years ago, begins by saying that he doesn't profess to give every word—of course we understand that—but to give the entire purport of it. Very well. Now, as it is the purport that he undertakes to give, we cannot exhaust the testimony by saying: "Did you use these words," or "those words," but, "Was the purport of what you said to him such as to leave an impression on his mind that the stories concerning which you were talking to him were true or false?"

Judge Neilson—That would be proper as calling for something more than mere intent and construction, because it would cover words that were used or might have been used.

Mr. Evarts—Was the purport of what you said to him such as to leave on his mind the impression that you thought those stories were true, or that you thought they were not?

Mr. Fullerton—He has already given the purport.

Judge Neilson—I think he has; but I think he may answer it.

Mr. Fullerton—Is not the jury to be the judge of the intent from the purport?

Judge Neilson—I think so.

Mr. Fullerton—It seems extraordinary if they have a right to go through with a long cross-examination of this witness as to what the purport of his language was, and after that go through with it and ask what intent he had in using it, and whether it was to produce such a result upon the mind of the listener. Why, if your Honor please, the jury are to judge of the intent from the language itself, or the purport of it, as given by the witness. It is a great waste of time, in my judgment, as well as a violation of the legal rule.

Mr. Beach—It is more than a waste of time, your Honor.

Mr. Fullerton—Yes, it is an evil example.

Mr. Beach—Your Honor will permit me to add this observation: Where this witness is unable to give the language of a conversation to which his attention is directed, it is proper to ask him what was the substance of what was said upon the occasion. This question goes further. It asks not only what was the substance or the purport of the conversation, but it asks the witness also to give his judgment or opinion whether that purport had the effect of leaving upon the mind of Mr. Beecher a certain impression. Now, that is usurping the office of the Court and the jury, Sir. It is not for this witness to say what would be the impression or the effect of the language, or the substance of the language as given, upon the hearer. That is for the jury to say, and it is to that part, that feature of the question, that we respectfully submit the objection lies.

Judge Neilson—Now repeat this question. I think many of these interrogatories are very extreme, especially when they require the witness to state what impression he intends to convey or what his intent was. [To THE TRIBUNE stenographer.] Just repeat the question, please.

THE TRIBUNE stenographer read the question as follows: "Was the purport of what you said to him such as to leave on his mind the impression that you thought those stories were true, or that you thought they were not?"

Judge Neilson—Answer that.

Mr. Beach—We except, if your Honor overrules our objection.

Judge Neilson—Yes, Sir.

Mr. Tracy—Just answer? A. Repeat the question, again, please?

THE TRIBUNE stenographer read the question again.

The Witness—No, Sir; the purport was not to leave upon his mind the impression that they were untrue, rather than that they were true.

HISTORY OF THE RETRACTION AND THE RECAN-  
TATION.

Q. Now, the two papers that you received that night and had with you at Mr. Beecher's, the accusation and the retraction—will you give the history of them from that time forward?

Mr. Beach—No, the accusation and the request.

Mr. Tracy—No, Sir; the accusation and the retraction. Beecher gave him the retraction and Tilton gave him the accusation.

Mr. Evarts—And he had them both.

Mr. Tracy—He had them both there. [To the witness] Now, when you got that from Beecher, and they were together in your possession; now will you give the history of those two papers from that time forward? A. I will give that, Sir, as nearly as I can. I took the recantation back to Theodore Tilton—back to my house and found Theodore Tilton there, and read it to him, and may have handed it to him to read, for aught I know, and then I put the papers, the confession and the recantation, into my bureau drawer, and then had it locked up in a safe after that, over in New-York. After the tripartite covenant was signed, Mr. Tilton wanted the confession, as he said, as an act of good faith toward his wife, and I gave it to him and it was destroyed; at least he told me that his wife destroyed it.

Q. That he gave it to her and he saw her destroy it? A. Yes, Sir; so I understood it.

Q. When was that? A. I think the "tripartite covenant" was in April, 1872; I think so; and it was a day or two after that, perhaps two days after that, that I gave to him the confession.

Q. From that time to the present where has the retraction been?

Mr. Fullerton—One moment. That other question is not answered.

Mr. Evarts—He didn't ask it.

Judge Neilson—We asked for the history of both papers; he has given the history of one.

Mr. Tracy—Yes, he says they were both together in his safe up to that time. Now, my question is, what became of the retraction afterward? A. I locked it up in my tin box, Sir, and kept it.

Q. Where? A. In my house.

Q. Until when? A. I think until I published this statement, Sir; I used it in this statement—in the first statement.

Q. After that what was done with it? A. I think before that I showed it to you at my house one night after the publication of the Woodhull story.

Q. Yes. A. And then I put it back into the box and kept it.

Q. Kept it? A. Yes, Sir.

Q. You say you kept it in a box until about the time that you published this statement on the 4th of August, and now where has it been since? A. Been in my possession—been in the box.

Q. Been in the box? A. Been in the box.

Q. Well, is it in your possession now? A. It was handed to Judge Morris among the other papers.

Q. When was it handed to Judge Morris? A. It was handed to Judge Morris since this suit was commenced.

Q. Is it in your possession now, or Mr. Tilton's, which? A. In Judge Morris's.

Q. Well, Judge Morris is Mr. Tilton's counsel, isn't he, in this suit? A. Yes, Sir; he is Mr. Tilton's counsel.

Q. Then you meant to say that you kept this retraction until Theodore Tilton brought a suit against Mr. Beecher, and then you surrendered it to his counsel, did you?

Judge Neilson—That question is quite unnecessary. The fact appears distinctly without that question.

Mr. Evarts—If your Honor please, there are a variety of papers in the hands of these gentlemen, and very properly. We do not know whether they are in their hands as counsel for Mr. Tilton—

Judge Neilson—Well, the witness has answered as to this paper all he can say, I suppose.

Mr. Evarts—We do not know, if your Honor please, until we learn from people who can speak on the subject, whether these papers that are now here and produced and handed to this witness are in the possession of this plaintiff, or only in the possession of these gentlemen for this witness.

Judge Neilson—The inquiry is as to this one paper which he states he took at a certain time and then he gave it to Judge Morris, and the fact appears that Mr. Morris is one of the attorneys—engaged as one of the counsel for the plaintiff.

Mr. Evarts—Yes, Sir; that is so.

Judge Neilson—This witness gave him that paper. That covers the whole ground. I merely meant to say that it covered all that the question called for.

Mr. Evarts—Are we to understand, then, that all these papers that belong to this witness and were placed in his hands by either party, and are being produced here by the counsel, are in Mr. Tilton's hands?

Mr. Fullerton—The gentleman can understand what he likes.

Mr. Evarts—We want to ask the question about it.

Mr. Fullerton—You have asked it and he has answered it. The question is whether you will learn a thing by its being said once or twice, or whether he will repeat a thing until you understand it.

Mr. Evarts—If your Honor please, this is not the question. If he answered once that he put it in Mr. Morris's hands as Mr. Tilton's counsel, that is enough, but if he merely answered, "I put it in Mr. Morris's hand," why, then, we have no other evidence about this paper than we have about all these papers, that they came—and very properly—from Mr. Morris's hands. The question is whether Mr. Morris holds them for him or for Mr. Tilton, by his authority.

Mr. Beach—Why don't you ask him that?

Mr. Evarts—Well, that is our question.

Mr. Beach—No, that is not the question.

Judge Neilson—I thought when I interrupted you—I am sorry I did for it is a waste of time—that you were putting a question that has been distinctly answered.

Mr. Tracy—I was not intending to put a question that had been answered. I did intend to put a question to the witness



which would call for an answer, that is, "Did you place these papers in the hands of Mr. Morris as Mr. Tilton's counsel in this case?"

Mr. Fullerton—That is not the question that was asked.

Judge Neilson—The question asked would emphasize what has been said before as to his intention.

Mr. Fullerton—And it is a re-hash of the whole testimony on that subject.

Mr. Tracy—Whether you placed this paper in the hands of Mr. Morris as the attorney of Mr. Tilton in this case? A. No, Sir; I did not place it in Mr. Morris's hands as the attorney of Mr. Tilton in this case; I received a subpoena from your office, and have consulted with Judge Morris about the terms of the subpoena, and have handed him my papers, and among others this paper.

Q. And you never put it in his hands before? A. I do not recollect that I ever did, Sir.

Q. Do you remember that you did not? A. To the best of my recollection, I did not.

Q. Then you mean to say that the paper is still in your hands, under this subpoena? A. I understand it to be so. I understand that that paper is for production in this Court.

Q. What was the exact date when you delivered this to Mr. Morris? A. I don't remember, Sir.

Mr. Evarts—Since the trial commenced? A. Yes, Sir; I have undertaken to give Judge Morris all the papers called for by your subpoena. I have undertaken to do that.

Mr. Tracy—Mr. Tilton asked for this accusation, that it might be destroyed, and you surrendered it to him for that purpose? A. Yes, Sir; Mr. Tilton asked for it that it might be destroyed.

Q. And you surrendered it to him for that purpose? A. Yes, Sir, after the tripartite covenant in April, 1872.

#### AUTHORSHIP OF MOULTON'S STATEMENTS.

Q. Now, Mr. Moulton, you have made and published two public statements, have you not, touching this matter? A. Yes, Sir.

Q. Both made after the publication of Mr. Beecher's statement? A. Both made after the publication of Mr. Beecher's statement.

Q. Where were those statements prepared? A. Those statements were prepared by Gen. Butler—

Q. I didn't ask by whom they were prepared; I asked where they were prepared? A. They were prepared, Sir, at Bay View and at Lowell; the first was prepared at Bay View and the other at Lowell.

Q. Were you present during the preparation of the first statement? A. I was.

Q. And directed its preparation? A. I gave to Gen. Butler, as my friend, the papers, and he made out the statement, himself, Sir.

Q. How about the other? A. The second statement was in about the same way, Sir.

Q. Do you know the manner in which these statements were made out? I will put a more direct question. Did you dic-

tate to a stenographer who took down your dictation? A. Did I dictate to a stenographer?

Q. Yes? A. No, I think not; I dictated a portion of the second statement, I think, to a stenographer—a portion of it only.

Q. Were you present when Gen. Butler dictated to a stenographer? A. Not all of the time; no, Sir.

Q. Most of the time? A. Which one are you talking about now, Sir?

Q. The first statement, we will say. A. Yes; most of the time, I think.

Q. How did Gen. Butler get possession of the facts except from your dictation or statement, aside from what were contained in the writings? Wasn't it from your statement that Gen. Butler got possession of the facts that were incorporated into these statements? A. I gave to him the facts, Sir, as I recollected them at the time.

Q. Verbally? A. Verbally.

Q. How many days was that first statement in preparation? A. I don't remember how many days.

Q. Was it several? A. It was part of several days, Sir.

Q. Did you bring it back with you here on your return to the city on the 4th of August. A. I think I did; yes, Sir; I will correct an answer that I made a few moments ago with regard to Judge Morris; I had that recantation with me there with Gen. Butler.

Q. Did you have also with you there the letter of Mrs. Tilton requesting the return of these papers that they might be burned? A. Yes, sir; I think I did; if that is in my statement I had it there.

Q. Well, supposing it is not; I don't care about that; did you have it there? A. I recollect that I had it there, I think, Sir, to the best of my recollection.

Q. We will not say anything about what is in your statement, or what is not? A. Yes; you offered me the statement, Sir, to guide my memory.

Q. Certainly. We don't object to your refreshing your mind by the statement. How many days was the second statement in preparation? A. I forget, Sir, how many days it was; several days.

Q. And what length of time intervened between the preparation of the first and second statements? A. I don't remember, Sir.

Q. About how long? Can't you refresh your mind by the book there? A. The second statement was prepared after Mr. Beecher's statement was made to your Committee, Sir, whatever date that was. I don't remember the date.

Q. I have understood you to say—perhaps I have misunderstood you—that they were both prepared after Mr. Beecher's statement? A. The first one was prepared before Mr. Beecher's statement—was prepared before Mr. Beecher's statement was made, I think; yes, Sir; before. It was prepared before; the second one was prepared after. I understood your question to be whether they were not both published after. Did I misunderstand you, Sir?

Q. I am not certain, Sir. A. I don't think I did.

Q. I am not certain, Sir. It is all right now, any way? A. Yes, Sir.

Q. What time intervened between the publication of the first statement and the preparation of the second? A. What time intervened between the publication of the first statement and the preparation of the second?

Q. Yes, Sir. You may just look at the date. A. I don't think this book furnishes the date.

Mr. Shearman—The first was published August 21st, and the second was published September 11th.

The Witness—I commenced to prepare—to make preparations for the second statement immediately after the first one—a short time after the first one.

Mr. Tracy—And you published it as soon as it was completed?

Judge Neilson—What do you mean by publishing? A. Gave it to the newspapers, Sir, to publish.

Q. They were both published in *The Graphic*, were they not? A. Yes, Sir.

Q. And your first statement was widely circulated before your second statement was completed?

Mr. Fullerton—I don't think that is important, Sir, in this case.

Judge Neilson—Whether it was published; that covers it, perhaps.

Mr. Fullerton—The publisher can tell better about that.

Mr. Tracy—I suppose the witness knows that it was widely circulated.

Mr. Fullerton—What difference does it make in this case whether it was widely circulated or not?

Mr. Evarts—That we will sum up on.

Mr. Fullerton—We will sum it up now. I object to it. Now sum it up.

Judge Neilson—It was published, and if he knows it was widely circulated, I think he can say so.

Mr. Fullerton—It seems to me that it is quite immaterial.

Mr. Tracy—It may be.

Judge Neilson—Do you know whether it was widely circulated, Sir? A. I don't know how widely it was circulated.

Mr. Tracy—Don't you know that it was widely circulated? A. I know that it was published in *The Graphic*. That is all I know about it.

Q. Don't you know it was published in other papers? A. I read it in *The Graphic*, Sir; I don't remember having read it in the other papers.

Q. You don't know that it was published, for instance, in *The New-York Herald* or *TRIBUNE*? A. In full, I do not.

Q. Was the larger portion of it published? A. I don't know that.

Q. Don't know that? A. No.

Q. Was any of it published in *THE TRIBUNE*, or *The Herald*, or *The Sun*, or *The World*, to your knowledge? A. I don't recollect.

Q. You don't remember? A. No.

Q. Do you know the fact whether your statement was published in any other paper except *The Graphic*?

Mr. Fullerton—Now, does the Court permit this long investigation about the different papers in which that statement was

published? I do not see how it adds to its force at all, that it was widely circulated.

Mr. Tracy—I will show you.

Mr. Fullerton—I am not asking you to show me, I am objecting to your question.

Judge Neilson—I think we will let him answer.

Mr. Fullerton—Well, Sir, if your Honor sees fit to let it in I have nothing to say.

Mr. Tracy—What is the answer? A. What is the question?

THE TRIBUNE stenographer read the question as follows: "Do you know the fact whether your statement was published in any other paper except *The Graphic*?" A. I don't know the fact, Sir, that it was.

Mr. Beach—I am perfectly willing he should give his supposition or his presumption, if they want it.

Mr. Evarts—We don't want his supposition; we want the state of his knowledge.

Mr. Tracy—Now, do you know this fact, whether the statements and omissions of statements—what your first statement stated, and what it omitted to state—were subjects of criticism by the public press before your second statement was completed? Do you know that? A. Whether the statements of what it omitted—

Mr. Evarts—What was in, or what was out.

Q. Whether it was a subject of criticism by the public press before your second statement was completed? A. I was told, I think, by Gen. Butler, that it was.

Q. I didn't ask what you were told. I ask you, Sir, whether you know the fact. I don't propose to go into declarations and conversations. A. I don't recollect the fact now, Sir. What I do recollect is that Gen. Butler told me that I was criticised for something that the first statement omitted.

Q. I don't ask you what he told you. A. Well, I don't know that you do.

Q. Did you show either of these statements before their publication to Theodore Tilton? A. I think I read a portion of the first one.

Q. I did not ask you whether you read it; I asked you whether you showed it to him, and whether it was the subject of conversation? A. It was the subject of conversation before publication; yes, Sir.

Q. And did you make Mr. Tilton acquainted with the contents of that statement before its publication?

Mr. Evarts—Which one are you speaking of?

Mr. Tracy—The first one now?

A. I think I did; yes, Sir.

Q. Did he have it in his possession? A. It was either read by him or read to him, Sir.

Q. You don't know which? How long before it was published? A. Just before it was published.

#### THE PURPOSE OF MOULTON'S STATEMENTS.

Q. Did he also see your second statement before it was published? A. Yes, Sir.

Q. Did he have that in his possession? A. I don't know that he had it in his possession. I had it in mine.

Q. Did you read it to him, or did he read it? A. He read it.



Q. Before its publication? A. Yes, Sir.

Q. Previous to that Mr. Tilton had also published a statement in regard to this matter, had he not? A. He published his sworn statement, I believe.

Q. And his cross-examination to his sworn statement had also been published, had it not, previous to that? A. I don't recollect whether his cross-examination had been published or not; I think his sworn statement was published.

Q. Did you read the first statement to any one else besides Tilton before publishing it? A. I did not read the first statement to any one besides before publishing it.

Q. Besides Mr. Tilton? A. No, Sir.

Q. Did you the second? A. No; I did not read the second statement to any one else.

Q. Then Theodore Tilton was the only party saw your legal friend and adviser, who knew or was permitted to know the contents of this statement before publication? A. No; I did not answer in that way.

Q. I asked whether you had read or permitted to be read either of these statements by any one else besides Theodore Tilton. I understood you to say you had not? A. I understood you to say, "had read."

Q. Read or permitted to be read?

Mr. Beach—No; that was not the question.

Mr. Tracy—Now I put the question: Had you permitted any other person to read either of these statements before publication? A. I think Mr. Morris read the second statement, or a portion of it.

Q. Any one else? A. Not that I remember.

Judge Neilson—Bear in mind, General Tracy, that you are inquiring as to collateral matter, and that the answers of the witness will be conclusive upon you.

Mr. Tracy—So I understand.

Mr. Evarts—Not only conclusive, but quite satisfactory.

Mr. Fullerton—Then they are content with trifles.

Mr. Evarts—We are asking for the very thing that we are getting, and we are content with that.

Mr. Beach—We would have given you a stipulation to this same thing.

Mr. Tracy—We would rather have it in before the Jury as evidence. We have too many papers already.

Mr. Beach—I think you have had too many papers for your satisfaction.

Mr. Tracy—Well, we are content. [To the witness.] Now, Mr. Tilton and Mr. Morris were the only two persons who had been permitted to become acquainted with the contents of these statements before publication? A. Yes; according to my best recollection that is so.

Q. Was this suit pending at the time you showed the second statement to Mr. Morris? A. I don't remember.

Q. Do you remember whether it was or not? A. No; I do not remember the time when the suit was commenced.

Q. Did you show the paper to Mr. Morris, as the attorney and counsel of Theodore Tilton? A. No, Sir.

Q. And you made these publications, did you not, because you deemed yourself a party to this controversy? A. No, Sir.

Mr. Beach—What controversy?

Mr. Tracy—This controversy. [To the witness.] You did not? A. No, Sir.

Q. Let me refresh your memory by referring to the book, at page 234. Please to refresh your memory. A. Yes, Sir; where is it?

Q. Look at the fourth paragraph from the end of your statement? A. That is the sentence commencing, "I do not know."

Q. We do not call for the contents; that is the sentence, and I want you to look at it and refresh your memory? A. "Not to aid either party to the controversy."

Q. I only want you to refresh your memory? A. I think that is a correct statement.

Q. Does it refresh your memory on this subject? A. I do not think it does.

Q. As to the point of view in which you published this statement? A. I don't think it refreshes my memory.

Q. You think, after reading that, you did not publish these statements as a party to this controversy, or to protect yourself?

Mr. Beach—That is quite a different question.

Mr. Tracy—Ah!

Mr. Beach—It is, ah!

Mr. Tracy—When I say to this controversy, I do not mean this suit, but to the controversy between Mr. Beecher and Mr. Tilton. If you understand me as referring to this suit by the word "controversy" you misunderstand me.

The Witness—What is the question now?

Q. I repeat the question whether you published either of these statements in the point of view of your own relation to the controversy then before the public?

Mr. Morris—That is the first time you have asked that question instead of repeating it.

The Witness—I would like to have the question read.

(THE TRIBUNE stenographer read the question.) A. I would like to explain the reason why; I cannot answer the question, yes or no.

Q. I want you to answer the question, if you please? A. I cannot answer it fully without saying more than yes or no.

Judge Neilson—Then proceed.

The Witness—I published the statement because of the attack of Mr. Beecher upon me.

Q. And you considered that as raising a controversy before the public in which you were a party, did you not? A. I considered it as something of a controversy between Mr. Beecher and myself.

Q. Before the public; and as a party to that controversy you published these statements? A. Yes, Sir.

Mr. Tracy—Now, we have got it.

Mr. Fullerton—Yes, you have got it, and you had it before.

Mr. Evarts—We have got his sworn statement.

Mr. Fullerton—You have, and that is not a thing for you to boast of.

Mr. Evarts—It is what we wanted anyhow.

Mr. Fullerton—A great many men get what they want, and don't think it satisfactory.

Judge Neilson—Now, gentlemen, proceed with the examination.

SOME FACTS OMITTED IN THE STATEMENTS.

Mr. Tracy—Now, Mr. Moulton, coming back—at the time that you were giving Gen. Butler the facts, for either of these statements, did you communicate to him the fact that you have sworn to on this trial in answer to this question: "Let me ask you, was anything said as to the substance of the interview between Mr. Beecher and Mr. Tilton, when you were not present" (that is the interview of the 30th; I read from your direct examination); and you in your answer say: "Why, he told me that Mr. Tilton had told him of the confession of his wife to him." Now, Sir, did you state that fact to Gen. Butler when he prepared your statements? A. Let me see the question on the direct examination [Book handed to the witness.] What interview is that, Gen. Tracy?

Mr. Tracy—The evening of the 30th—the night that you went to Mr. Beecher's.

The Witness—I don't think I told that. You refer now to my answer where he told me that Mr. Tilton had told him of the confession of his wife to him. That is what you ask.

Mr. Tracy—Yes.

The Witness—I don't recollect that I told Mr. Butler that.

Q. You don't recollect that you told Gen. Butler? A. No; I don't recollect that.

Q. Then you were asked: "Just repeat now, what he said upon that subject." "A. Mr. Beecher told me that Mr. Tilton had told him that Elizabeth had confessed, and had read to him what either was a confession or a copy of a confession of Elizabeth, of sexual intercourse between them; and he told me that Theodore had told him of the reasons of sending to him the letter through Mr. Bowen. That is all that I remember just now." Now, you told Gen. Butler that? A. I don't remember that I did.

Q. Don't you remember that you did not? A. To the best of my recollection, I did not.

Q. In either of these statements? A. No, Sir,

Q. Did you state to Gen. Butler this: "Do you know whether Mr. Tilton kept a copy of that paper of which you now speak, which he gave to you?" "A. He made a copy of it, I think; he made a copy of it." Did you tell that to Gen. Butler? A. That is with reference to the confession itself?

Q. Yes. A. I think I told him that.

Q. You think you told him that? A. I think so.

Q. I will ask you hereafter to point it out to me in which statement. A. All I told Gen. Butler is not in the statement.

Q. No matter. I ask now what you told Gen. Butler?

Mr. Fullerton—And the counsel will ask you to point out in the statement what was not there.

Mr. Tracy—I will ask him to point out whether it was there. I didn't understand the witness to say that it was not there. [To the Witness.] Q. Then, did you tell him this: "Did he tell you of his object in going there?" "A. He told me that Theodore had given him permission to go to Elizabeth for confirmation of the story; nothing further than that." A. I think I told Gen. Butler that,

Q. You think you did? A. Yes, Sir.

Q. On your direct examination, you say, speaking of the in-

terview of December 31st: "He [that is Mr. Beecher] said, of course if this charge is made against me, if Theodore should make any charge against me, my defense would be the technical one of general denial; but with you, since you know the truth, I would throw myself upon your friendship and what I believe to be your desire to save me." A. Where is that?

Q. That is on page 109 of my book, down toward the bottom of the column. A. I think I told him the substance of that, Sir. I tried to give him as near as I could.

Q. I did not ask what you tried to do, but what you recollect that you did. Do you recollect that you told Gen. Butler that? A. My recollection is that I told him the substance of it—yes, Sir.

Q. Did you also give to Gen. Butler the letter of Mrs. Tilton calling for that paper? A. I took the paper to Gen. Butler.

Q. Did you give him that paper and call his attention to it? A. I think that paper was among them.

Q. You did? A. Yes; I think that paper was among them.

Q. Has the statement, that you read that letter to Mr. Beecher, on the night of obtaining that retraction, ever been publicly stated by you, before you stated it as a witness upon this stand. A. Publicly stated? No, I think not.

Q. You think not? A. I do not think it has.

Q. You presented that letter in one of your statements, did you not? A. Yes, Sir.

Q. In which? A. I think in the first.

Q. But you did not state that. That interview with Mr. Beecher has always been published as if he surrendered that retraction on your demand, and on yours alone, until this trial, has it not?

Mr. Fullerton—We object, unless the counsel explains what he means by "has always been published."

Mr. Tracy—I will amend my question. [To the Witness.] That interview with Mr. Beecher has always been published as if he surrendered that retraction on your demand, and yours alone, until this trial, so far as you know, has it not? A. Yes, I think it has.

Q. You always knew that representation of that interview between yourself and Mr. Beecher to be false, did you not? A. What representation?

Q. The representation of that interview; that that retraction was surrendered by him to you, and upon your demand alone? A. No, Sir.

Q. You did not know it to be false? A. No; I gave my recollection of it.

Q. Did you know it to be untrue? A. It did not correctly state it; it did not fully state it.

Q. Then you knew it did not fully state the truth, did you not?

Mr. Fullerton—What?

Mr. Tracy—The one in which that interview has been published.

Mr. Fullerton—Published where?

Mr. Tracy—Anywhere.

The Witness—I gave my recollection of it at the time; that is all I could do.

Q. Answer my question. Did you not always know the true



account of that interview would have included the letter of Mrs. Tilton? A. No; I did not remember it at the time that I made that statement.

Q. You mean to say, then, that while you had possession of this letter of Mrs. Tilton, during the two years and upwards of this controversy, you never remembered the fact that you obtained that retraction from Mr. Beecher, by presenting Mrs. Tilton's letter, requesting its return that it might be destroyed?

Mr. Morris—We object to the assumption that there has been two years of this controversy.

Mr. Beach—Worse than that. The question assumes as true that this retraction was obtained by the presentation of Mrs. Tilton's letter, which is in direct contravention of the evidence.

Mr. Evarts—The question does not say that it was obtained by means of that.

Mr. Fullerton—It does so assume.

Mr. Evarts—It should not. That is not the point. The point of the inquiry is that the surrender of the retraction which Mr. Beecher had, was obtained by the use of this letter at the time that it was obtained. The contrary has always been published, as he states. Now General Tracy asks if the gentlemen knew during this time that this letter had been presented to Mr. Beecher.

Mr. Beach—The contrary has not been the universal statement. The fact simply is that Mr. Moulton now reveals in his evidence that when the application was made to Mr. Beecher for this retraction, he read the letter of request from Mrs. Tilton, and the additional fact now appears that the circumstance of reading that letter to Mr. Beecher had been omitted in the statement that has been given by Mr. Moulton.

Mr. Evarts—The existence of the letter—the presentation of the letter?

Mr. Beach—Not the existence of the letter, for it had been published.

Judge Neilson—In other words, the letter is not referred to in the statement.

Mr. Beach—Not only has it been referred to, but was published.

Mr. Tracy—Published without any connection with this interview.

Mr. Beach—No; the question is as to the omission of the witness in his statement to reveal that, on the application to Mr. Beecher, this letter was presented to him at the time. Now the question assumes that the retraction on that occasion was obtained on the presentation solely of that letter.

Mr. Evarts—No, it does not.

Mr. Beach—It was a mere omission of the letter from the statement.

Mr. Tracy—A very remarkable omission. I characterize it a wilful omission.

Judge Neilson—I don't think that that expression is called for.

Mr. Tracy—I don't think that either expression is. The gentleman had no right to say it was a "mere omission."

[The witness calls for a reading of the question, which is read by THE TRIBUNE stenographer.]

Mr. Beach—Now that assumes two or three facts.

Mr. Tracy—I will change the form of the question.

Mr. Beach—To an intelligible question, that the witness can understand.

Mr. Fullerton—One that you can understand yourself.

Mr. Tracy—I will try to understand it myself.

Q. Do you mean to say that it never occurred to you that you presented and read that letter of Mrs. Tilton to Mr. Beecher on this night of obtaining this retraction, until after you had made both of your statements? A. Yes, Sir; I did mean to say that. Let me explain my answer to that question.

Q. Do you mean to say that it never occurred to you that you presented and read that letter of Mrs. Tilton to Mr. Beecher, on this night of obtaining this retraction, until after you had made both of your statements? A. No, I do not mean to say that. My answer to that question was wrong. I will explain the answer. I mean to say it did not occur to me at the time that I made the statement. That is the way that I want to answer the question. I want to strike out of my answer the part that it never occurred to me; it did occur to me.

Mr. Evarts—The answer of the witness is no; and now he makes an explanation.

Mr. Fullerton—The answer "no," simply, was wrong when he understood the question.

Mr. Beach—Will your Honor permit me to suggest: The witness answered the question first in the affirmative, and then upon the explanation answered it no, and answered it correctly no. He then asked your Honor for permission to explain, which was accorded him, and he has done so.

Mr. Evarts—That is exactly what we have just stated. [Applause.]

Judge Neilson—Gentlemen, do you think that it promotes the business of the Court to reward counsel by your applause? I think not, and you had better refrain. The counsel here are gentlemen who do not require to be encouraged or applauded.

Mr. Tracy—I wish to see how the record stands, with the view of putting another question.

[THE TRIBUNE stenographer was directed to read the question and answer again, and did so.]

Q. How long, prior to your making these two statements, did you recollect the fact of your having presented this letter to Mr. Beecher and read it to him on the night of obtaining this retraction? A. I cannot say, Sir; it had not been in my mind on this subject for a long time; there had not been anything in my mind for a long time.

Q. You cannot say how long? A. For a good while; I do not think I charged my mind with the interview particularly after it occurred.

Q. Until when? A. Until I commenced to make the statement—until I was with Gen. Butler; and at that time I undertook to tell Gen. Butler—

Q. No matter about that—the time is what we want, and that we have got. Now, your attention was first called to this interview between yourself and Mr. Beecher by the publication of the statement in what is known as the Woodhull statement? A. Called to what?

Q. To this interview between yourself and Mr. Beecher—by

any public statement, first in the Woodhull statement? A. By any public statement? I think that was it.

Q. Did you at the time of that statement remember that you presented to Mr. Beecher this letter on the night that you obtained that retraction, and read it? A. I do not recollect that I remembered it then. I do not recollect now that I remembered it then.

Q. Did you recollect it at any time intermediate to the publication of the Woodhull statement and the making of this last publication? A. I don't know that I did; I don't know that I tried to recollect the circumstance.

Q. Explain your answer that you have already made, by telling us what you mean when you say that it had occurred to you, and your answer saying that it never had occurred to you was erroneous?

Mr. Beach—That is not so. He always remembered it. There is quite a difference between having it in the memory and having it occur to a party at different times, or at a series of times.

Mr. Evarts—That is the question—had it never occurred to him?

Mr. Tracy—Now, I ask you, beginning with the first publication; let me see if I understand you correctly; I understand you to say, now, that when you read the Woodhull publication, with its account of that interview, the fact that you did present to Mr. Beecher that letter on that night did not occur to you?

Mr. Beach—That question improperly assumes the Woodhull statement refers to that interview, and contains an account of it.

Mr. Tracy—The witness has already sworn to that in the pistol scene.

Mr. Beach—He has not.

Mr. Tracy—I take it that when he referred to the pistol scene he has already sworn to it.

Judge Neilson—What the counsel suggests is that it did not appear that the fact was in the Woodhull statement.

Mr. Tracy—The fact was not in the Woodhull statement; that is just the point.

Mr. Beach—For the purpose of this discussion, I deny that.

Mr. Evarts—Are you arguing it now?

Mr. Beach—I am arguing against your question.

Judge Neilson—What is your present question?

Mr. Tracy—The question is: Did you read that part of the Woodhull statement which referred to the interview between yourself and Mr. Beecher on the night this retraction was obtained? Did you read it?

Mr. Beach—I object to that as assuming that something appeared in the Woodhull statement.

Judge Neilson—That is a good objection.

Mr. Tracy—Does your Honor decide that the paper being in evidence collaterally, the witness cannot be asked whether he read it?

Judge Neilson—The Woodhull paper is not in evidence collaterally, or in any other way, and I decide that in putting the question you cannot assume a fact that has not been proved.

Mr. Tracy—I asked him whether he read it.

Mr. Fullerton—No, you did not ask him that.

[Mr. Fullerton asked THE TRIBUNE stenographer to read the question, and it was done.]

Mr. Tracy—I understand the counsel to say that he talked about the Woodhull statement.

Mr. Tracy then read from the witness's testimony of yesterday, published in THE TRIBUNE, as follows:

Q. Did you read her published statement? A. I don't know that I read all of it.

Q. Do you know that you did not? A. I think I did not read all of it; I think I never have read all of it.

Q. What part was it you omitted? A. Well, I don't really remember what part I did omit; I knew the general drift of it.

Q. Did you state to her that you took a pistol, and went to Mr. Beecher and demanded the letter of Mrs. Tilton under penalty of instant death? A. No, Sir; I did not.

Q. Did you state anything to that effect? A. No, Sir.

Q. Did you, in that or in any other conversation, describe to her the piteous and abject beseeching of Mr. Beecher not to be exposed to the public? A. No, Sir.

Q. Nothing of that kind occurred? A. No, Sir. You asked me a moment ago, Judge Porter, if you allow me, whether I had read any part of that statement, or whether I had read the whole of it. I can tell you I did read the part of the pistol scene, and I can tell you something that would be of interest to you in regard to that. Shall I say so?

Q. If you please. A. Mr. Beecher asked me about that part of it that referred to the pistol scene, and asked me if I remembered anything about the pistol part. He said he didn't. It didn't make enough impression on him.

Q. Is that all? A. Yes; that is all—that is about all of it."

Mr. Tracy—Now, the pistol scene is this interview.

Mr. Beach—The counsel has succeeded in throwing utter darkness upon this matter.

Mr. Tracy—Now I ask you whether the Woodhull publication recalled the fact to you that you presented this letter to Mr. Beecher, on the night that you obtained the retraction?

Mr. Beach—That question is proper. I have no objection to that.

The Witness—I don't remember whether it did or not.

Q. Then if that did not bring it to your mind, tell us when and where it was that you did remember the fact that you presented that letter to Mr. Beecher on that night? A. Yes, I will.

Q. When did you remember it? A. Well Sir, a few days ago—say a few days ago—perhaps two or three weeks ago—two or three weeks ago Theodore Tilton told me—

Q. I don't ask what he told you; I asked when you remembered it? A. I think two or three weeks ago.

Q. That answers the question. That is the first that you recollect the fact? A. I did not say so.

Q. Well, is it? A. Since when?

Q. Since it occurred? A. No, I don't think it was.

Q. How long do you remember that fact? A. I don't know how long I remember it.

Q. That is enough on that subject. Now, after the night of the



31st of December, when did you next see Mr. Tilton? A. After the night of the 31st of December, when did I next see Mr. Tilton?

Q. Yes, Sir. A. I saw him January 1st, I think.

Q. What time of day? A. I cannot remember the time of day.

Q. Where? A. I think at my house in Clinton-st.

Q. Did he come by appointment? A. I don't remember that he did.

Q. What day of the week was January 1st that year? A. I think it was Sunday.

Q. Did you know on that day that he had been discharged by Mr. Bowen from *The Union* and as contributor to *The Independent*—on the 1st day of January? A. I think I learned it for the first time on the night of the 31st of December.

Q. What time of night? A. Very late, when I got home.

Q. After you returned from Mr. Beecher? A. Yes, Sir. I say "very late;" not very late—somewhere between nine and twelve o'clock.

Q. But it was after you returned from Mr. Beecher, and after you had obtained this retraction? A. Yes, Sir.

Q. That was the first you knew of it? A. Yes, Sir.

Q. That is, the discharge? A. Yes; That was the first I knew of it?

Q. What time of day did you visit Mr. Beecher on the 1st of January? A. I think it was about—it was in the afternoon, some time toward evening.

Q. What time? A. I don't remember the time exactly. It was between four and seven o'clock, I think.

Q. Can you approximate any nearer than that? A. I don't think I can now; somewhere between four and seven.

Q. Do you recollect whether it was before or after dark when you went there? A. It was before dark, I think.

Q. Was it after dark when you left? A. I think the gas was lighted when I left.

Q. And where was that interview? A. In his study, Sir; I think it was in his study.

Q. Was the gas lighted when you went in? A. I don't think it was.

Q. Did you find him in the study, or did he go there with you? A. I think we went into the study together.

Q. How long had you been there, do you think, before the gas was lighted? A. Oh! I suppose an hour or more.

Q. How long did you remain at that interview with him? A. I guess I may have remained an hour and a half or two hours.

Q. You remember distinctly his lighting the gas that night, do you?

Mr. Beach—He has not said so. The counsel assumes that the gas was lighted.

Mr. Tracy—I understand him to say that the gas was lighted.

Judge Neilson—He said the gas was not lit when he went there and it was lit when he left.

Mr. Morris—He said that he thought that the gas was lit when he left.

Judge Neilson—Now he is asked if he remembers distinctly Mr. Beecher lighting the gas.

Mr. Beach—The question assumes that the gas was lighted in the study.

Mr. Tracy—The witness says the gas was not lit when he went in, and that it was lit when he came away. He says that the interview was in the study; and now I ask him if he saw Mr. Beecher light the gas?

Mr. Morris—The witness did not say that the gas was lighted when he left; he said that he thought it was; that was the testimony.

Mr. Tracy—Did you see Mr. Beecher light the gas? A. I don't remember that Mr. Beecher lit the gas.

Q. Did you light it? A. I don't know whether I did or not.

Q. Did any third party come in to light the gas? A. I don't remember.

Q. Was it lit when you came away? A. In the study?

Q. Yes? A. I don't remember that it was in the study.

Q. Where was it lit, if not in the study? A. I don't know that it was lit anywhere; I think the gas was lit when I went away.

Q. Do you mean to say that the gas was lit in the street when you went away? A. I think it was.

Mr. Tracy—It is now four o'clock, if your Honor please, the hour of adjournment.

Judge Neilson—I suppose you think it is time the gas were lit.

Mr. Tracy—No, Sir; I think it is time to extinguish it. [Laughter.]

The Clerk—The Court stands adjourned until eleven o'clock, on Friday.

## NINTH DAY'S PROCEEDINGS.

THE FIRST WITNESS FURTHER EXAMINED.  
THE FOURTH DAY OF THE CROSS-EXAMINATION OF  
FRANCIS D. MOULTON—CONTINUED ABSENCE OF  
EX-JUDGE PORTER—THE LETTER OF CONTRITION  
ANALYZED—ITS AUTHENTICITY QUESTIONED.

Thursday, Jan. 21, Gen. Tracy took up the cross-questioning of Mr. Moulton at the point where it terminated on Wednesday, and after a few unimportant queries, the questioner came to the consideration of the celebrated letter of "contrition," alleged to have been written at Mr. Beecher's dictation. During the examination upon this theme there was profound silence in the courtroom, and every eye was turned on the witness. He seemed entirely at ease, and displayed no hesitancy in replying to Gen. Tracy's significant inquiries. The first admission made by him was that he could not remember any letter in which Mr. Beecher addressed him as "My dear Frank," except the one which was asserted to have been written at the defendant's dictation. The witness was examined carefully and at length concerning the manner in which the letter was written. The

sensation of the day followed. Mr. Shearman read the letter, as he said, for the purpose of having its construction well understood. Immediately after the reading Mr. Shearman said a "t" had been added to the word "can," and the words "for myself" placed after the word "plead," so as to make the sentence read: "I will not plead for myself."

The remarks of counsel aroused excited interest among the spectators, for it was the first attack upon the authenticity of the celebrated letter on which so much depends in the great trial. The jury looked eagerly from witness to counsel and from counsel to witness. To add to the impression he had produced, Mr. Shearman then stated that two different kinds of ink were used on the letter. Another ripple of excitement ran through the court-room. Some of the jurymen looked sharply first at the plaintiff and then at Mr. Moulton, as if expecting an explanation from one or the other. Mr. Moulton smiled complacently. Mr. Morris was greatly excited. Jumping to his feet, he asked for the letter. Upon receiving it, he, with Judge Fullerton, went over it hastily. Then Mr. Morris accused Mr. Shearman of having tried to create a false impression. He declared with warmth that it was plain that the pen used in writing the letter did not deliver the ink freely, and in this way he accounted for the difference in the appearance of the several parts. An attempt to make a further explanation was cut short by a prompt objection from Mr. Evarts. The assertions made by counsel for the defense plainly annoyed Mr. Tilton's lawyers. Nothing of particular importance was developed during the rest of the session except the introduction of two letters written by Bessie Turner. Her statements in these letters would seem to show that she left Mr. Tilton's house for a seminary because she knew of the alleged relations between Mrs. Tilton and Mr. Beecher.

#### LEGAL ASPERITIES.

There were several unusually lively controversies between counsel on Thursday, which added greatly to the interest of the proceedings. Encounters of this character relieve the monotony of the examination, and never fail to attract the close attention of even the dullest-minded spectator. In the art of repartee Mr. Fullerton, Mr. Beach, and Mr. Evarts overtop the remaining counsel. Gen. Tracy, on one or two occasions, stung by the rapier-like thrusts of ex-Judge Fullerton, has tried to meet his adversary

with similar weapons, but could hardly have been altogether pleased with the result.

Mr. Beach, in the course of Moulton's examination, made a statement in regard to the testimony of the witness which he found to be incorrect. He therefore apologized. Gen. Tracy smiled somewhat sardonically, and remarked dryly that he was glad that counsel had made at least one correction. "You will always find me correcting myself when I am wrong," replied Mr. Beach. "Yes, I am glad that *you* do," retorted Gen. Tracy, as he glanced at Mr. Fullerton, meaningly. The latter flamed up in an instant; then, in his peculiarly sarcastic way, said to Gen. Tracy, "We hope that *you* will not attempt to correct all your mistakes, for it will take up all your time. We want to go on with this trial." On another occasion Gen. Tracy told the witness that he was "reasoning" and not answering the question put to him. Mr. Fullerton broke in, in an undertone, "Yes, reasoning, and that is where we have the advantage of you."

Mr. Shearman also came in for a share of Mr. Fullerton's criticisms on Thursday, but he received them good-naturedly, and with apparent unconcern. While preparing to read the alleged letter of contrition, he remarked that he should read the punctuation just as it was in the paper he held. "You cannot read punctuation, but you may observe it," said Mr. Fullerton sharply, and the trivial criticism brought a grim smile to Mr. Evarts's features. Mr. Fullerton made another thrust at Gen. Tracy in the afternoon. This was when the latter asked Mr. Moulton if he could tell him how to punctuate. Mr. Fullerton, in a very bland way, objected to the question: "If counsel is asking for his own information I don't object, otherwise I do." The spectators smiled, and there was just the faintest twinkle of mirth in Judge Neilson's eyes as he rapped for order. Mr. Fullerton remained quiet for the remainder of the day, but Judge Beach availed himself of every opportunity to take Gen. Tracy to task. The cross-examiner, in exhibiting the letter of "contrition" to Mr. Moulton, asked him if he generally spread so little matter over so large a space.

"It strikes me," remarked Judge Beach in an undertone audible only to counsel and a few reporters; "it strikes me that the learned counsel is spreading much smaller matter over as much space."

An incident occurred during the afternoon session which seemed to afford no little satisfaction to Mr



Tilton's adherents. Mr. Evarts, on rising to address the Court, was told rather sharply by Judge Neilson that his efforts to instruct the Court were uncalled for, but the lawyer addressed did not appear at all disconcerted, and blandly disavowed the intention attributed to him.

#### NOTES IN THE COURT-ROOM.

The continued composure of the first witness for the prosecution under the severe cross-examination which he has been subjected to is remarkable. With the exception of two or three slight breaks, Mr. Moulton has appeared quite as self-possessed as the counsel examining him. Truthful or untruthful as a witness may be, it is no easy matter to preserve one's temper under the attacks of a cross-examiner, even if he is not a thorough master of his art. At one moment addressed as if a criminal, the next sneered at, and again confused with a series of puzzling interrogatories put in quick succession, many an honest witness has been forced into embarrassments suggestive of guilt. Not so with Mr. Moulton. He answers just when he pleases and appears at times to take pleasure in replying in such a way as to require the putting of another question. His remarkable memory excited admiration at the opening of the trial. When he repeated, word for word, from recollection, Mr. Beecher's alleged letter of resignation, he was applauded, but on Thursday his memory seemed defective.

It is seldom that Mr. Moulton's answers are such as the cross-examiner expects. One striking case in point was noticeable in Thursday's examination. "You write and compose well, do you not?" asked Gen Tracy. (An affirmative answer was plainly expected.) "No, I think not," replied the witness with a smile, and Gen. Tracy pursued that line of investigation no further.

Francis B. Carpenter, the artist, was in court again during the sessions of Thursday, and listened with the utmost attention to the proceedings. There were only a few prominent citizens of Brooklyn present, but among the number were the Hon. H. W. Slocum, the Hon. Henry C. Murphy, Wm. Marshall, and Judge Reynolds.

#### THE PROCEEDINGS.

Mr. Porter's indisposition continues, and so Gen. Tracy went on with Mr. Moulton's cross-examination on Thursday. The unwholesome stories about Tilton's improprieties with Bessie Turner and others were the subject of the first question. Then a heavy cross-fire was brought to bear upon

the witness with reference to the paper known as "the letter of contrition." The wit of all of Mr. Beecher's lawyers actively engaged in the case was in the field in this attack, Mr. Evarts and Mr. Shearman stepping to Gen. Tracy's side almost every alternate minute with advice or hints, and themselves taking part in the questioning.

#### BESSIE TURNER'S STORIES.

Francis D. Moulton recalled, and the cross-examination continued:

Judge Neilson—Will the counsel proceed?

Mr. Evarts—There is one point, if your Honor please, that was reserved for your Honor's consideration and determination, which perhaps it may be proper now to call up, if your Honor has considered it, or, if not, to ask your attention to it.

Judge Neilson—As to the admission of a paper?

Mr. Evarts—As to the admission of what is called the West charges on the evidence as it stood after the witness's correction.

Judge Neilson—I think I will let it stand, Sir, and you may take an exception to it; Judge Porter is still ill.

Mr. Evarts—Yes, Sir; Judge Porter is still ill, though his physician hopes he may be able to be out to-morrow, though that is not certain; it is necessary for us, of course, to know whether the paper is in or not.

Judge Neilson—Consider it in.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Mr. Tracy—Mr. Moulton, how long was the interview which you had with Mr. Beecher on January 1st? A. My impression is, Sir, that it may have lasted an hour or two.

Q. Can't you approximate more nearly than that? A. No, Sir; not more nearly than that.

Q. At what point of the interview did you begin to write the letter—the paper that was written on that day? A. Shortly after the termination of the first expressions of Mr. Beecher. Call it the beginning, if you please; not the first thing, but the beginning, after he had expressed to me his sorrow for what he had done.

Q. Was Mr. Beecher moved with deep feeling on that day? A. He was, Sir.

Q. Was he walking the floor most of the time during that interview? A. I don't think he was, Sir; my recollection is that he was not.

Q. Was he sitting or standing? A. I think he was sitting, Sir, by the table.

Q. By the table? A. Yes, Sir; I think so.

Q. What was your position? A. I was sitting.

Q. Where? A. By a table, I think; I think there was a table there.

Q. At the same table? A. I should think it was the same table; yes, Sir.

Q. On different sides of the table? A. My recollection is that Mr. Beecher was at the end; I was in the front of it; as if one should be seated as Mr. Beach is, Sir.

Q. Was it some remark that Mr. Beecher had made express-

ing his feeling towards Theodore Tilton that led you to suggest the writing of that paper, or a paper? A. Yes, Sir.

Q. Then you suggested it, did you? A. I said to him that he better put that—

Q. Answer my question. Are you the one who, at that interview, suggested the preparation of a paper?

Judge Neilson [to the Witness]—You were proceeding to answer. Go on, Sir.

A. Yes, I suppose I might have been considered the person that suggested it.

Mr. Tracy—Were you the person? A. If your Honor will allow me to explain—

Judge Neilson—State what you said. You were proceeding a minute ago. That is the way to answer. State what you said. A. Yes, Sir. I said, "Mr. Beecher, if you feel in this way towards Mr. Tilton, it seems to me that if you should so express yourself to him it would make an end of this trouble. It seems to me that it would be the best thing that you could do to so state to him." And then he said to me, "Take pen and paper, and I will."

Q. How long had that interview continued between you before that began? A. Not very long, Sir.

Q. Before you took pen and paper? A. Not very long—not half an hour—I should not think it was half an hour.

Q. Upon how many different subjects had you conversed before you began to write? A. Only on one or two. As near as my recollection serves me, I told him about taking back—I said to him, "Mr. Beecher, I took back that recantation to Theodore last night," and I said to Mr. Beecher, "He seems to me to be in the spirit of saving his family, no matter what comes to himself," and then Mr. Beecher proceeded to say that he felt great sorrow.

Q. I did not ask you what either party said; I asked you for the subjects that you conversed on? A. Well, that was it.

Q. That was one subject? A. Yes, Sir, the recantation, and then his expression of sorrow followed it.

Q. Was anything said about Mr. Tilton's condition financially and his prospects now that he had been discharged from the employment of Mr. Bowen? A. No, Sir.

Q. Nothing at all? A. No, Sir.

Q. At no part of that interview? A. No, Sir.

Q. Either before or after the writing of the letter—of the paper? A. No, Sir.

Q. Did you tell Mr. Beecher that Mr. Tilton had received letters dismissing him from Bowen's service? A. I don't remember that I did, Sir, at that stage of the conversation.

Q. At any stage of the conversation? A. Very likely I did, Sir; I don't remember that I did.

Q. What? A. Very likely I did, Sir; I don't remember that I did.

Q. Well, did you? A. I don't recollect now that I did, Sir.

Q. Do you recollect that you did not? A. I haven't any recollection upon that subject.

Q. You had learned it for the first the night before? A. Yes, Sir.

Q. This was the first interview you had had with Mr. Beecher after learning that fact? A. Yes, Sir.

Q. And you don't recollect of having mentioned it? A. I don't recollect that now, Sir; no.

Q. Did you have any further talk about the stories that Bowen had circulated in regard to Tilton, at that interview before the writing of the paper? A. No, Sir; I think not.

Q. You think not? A. No, Sir; not before the writing of the paper.

Q. Did you, at any time during that interview? A. Yes, Sir.

Q. After the writing of the paper? A. My recollection is that it was after the writing of the paper; yes, Sir.

Q. How long after? A. Well, I should say shortly after.

Q. What did Mr. Beecher say at that interview about these stories? A. He said that he had mentioned in his interview with Mr. Bowen when Bowen brought him the letter demanding his retirement—he said that he had told Bowen—I think that Mr. Bowen had mentioned the name of a woman, and Mr. Beecher said that he had heard the same story, and had rather joined Mr. Bowen in that story, and he said he would take it back.

Q. He mentioned the name of a woman? A. He said that he had heard the name of a woman. He said that he had heard the same story.

Q. Was her name mentioned there between you and Mr. Beecher? A. Yes, Sir; her name was mentioned.

Q. What was said about the woman? A. He said that Mr. Bowen had told him of Mr. Tilton's intimacy with this woman, or of the stories concerning his intimacy with this woman; that he, Mr. Beecher, had told Mr. Bowen that he had heard the same stories concerning her; and I said to Mr. Beecher—is that right, Sir?

Q. Go on. A. And I said to Mr. Beecher that I thought it was very unjust towards the woman and very unjust towards Theodore; that I knew both parties and I did not think that there was anything wrong between them at all, and from my acquaintance with Theodore Tilton I had the highest confidence in him, and from my knowledge of the woman, and from my acquaintance with her, I had the highest confidence in her, and I didn't think any such story was true. That is the substance.

Q. You pronounced it untrue, didn't you? A. Yes, Sir.

Q. Didn't you say you knew all about their relations and you knew they were untrue? A. No, Sir; I didn't say that.

Q. Didn't you say you knew enough about their relations to know that they were untrue? A. No, Sir; I said from what I knew of their relations—from what I knew I should judge it to be untrue and unjust.

Q. Did you say you should judge it to be? A. Sir.

Q. Did you say that you should judge it to be untrue? A. The substance of what I said, Sir, was the word "judge."

Q. Didn't you say that, from what you knew of their relations, you knew that that story was untrue? A. From what I knew of the parties, Sir; not of their relations.

A. Well, of the parties? A. Yes, Sir; I believed the stories were untrue.

Q. What did Mr. Beecher say in answer to that? A. He said he was very glad to hear it.

Q. Did Mr. Bowen state the particulars of what he knew of their relations?



Mr. Beach—Bowen? Bowen was not there.

Q. When Mr. Beecher told you that he was glad to hear that it was untrue, did he express any sorrow for having repeated that story to Mr. Bowen? A. Yes, Sir; he said he was sorry.

Q. That he had repeated it? A. Yes, Sir.

Q. How did he say, and what on that subject? A. He said he was very sorry if he had done an injustice to the woman and to Theodore.

Q. And to Theodore? A. Yes, Sir.

Q. Didn't he express himself warmly on that subject of the injustice that he had done them? A. He expressed himself sincerely, Sir, I should say, and he said he would write a note to Mr. Bowen taking it back.

Q. Did he draft a note there? A. No, Sir.

Q. Well, did he write it there? A. No, Sir.

Mr. Evarts—I think there is a question before this that is not answered.

Mr. Beach—No, it was not answered, because I said Mr. Bowen was not there.

Mr. Evarts—[To THE TRIBUNE stenographer]. Read the question.

THE TRIBUNE stenographer read the question referred to, as follows: "Did Mr. Bowen state the particulars of what he knew of their relations?"

Mr. Tracy—We will pass that. [To the Witness.]

Q. Did Mr. Beecher at that interview state anything about Bessie Turner? A. I don't think he did at that interview, Sir.

Q. Had he, at any of the interviews previous to that, said anything about Bessie Turner? A. I don't remember that he had, Sir, said anything about Bessie Turner.

Q. Her name had not transpired? A. Not up to that time.

Q. Up to that time? A. No, Sir.

Q. When do you remember its transpiring between Mr. Beecher and yourself first? A. Some time after the first of January.

Q. Well, that is quite indefinite. Can't you be more definite than that? A. I should think, Sir, it was between January 1st and January 10th.

Q. Didn't Mr. Beecher tell you at that interview that the girl Bessie Turner had come to him along in the last days of December, and reported to him one or two scenes as having transpired between her and Theodore Tilton? A. No, Sir.

Q. You knew the girl Bessie Turner at that time, did you not? A. I had seen her at Mr. Tilton's house.

Q. She was a girl living in Mr. Tilton's family—a young girl was she not? A. I saw her at Mr. Tilton's house; I believe she was living there.

Q. Don't you know she was living there? A. I believe she was; I think she was living there, Sir.

Mr. Tracy—[To the Court.] Your Honor made a suggestion that I did not hear.

Judge Neilson—He had answered that she was living there.

Mr. Tracy—I understood the witness to say that he saw her at the house.

Q. How long a time had she been living there? A. I don't really know.

Q. When Mr. Beecher spoke to you about Bessie Turner,

whether it was on this day or some subsequent day, did he tell you the particulars of what Bessie Turner had told him? A. Of what she had told him personally?

Q. Yes, Sir; concerning Theodore Tilton? A. I don't know whether he told me what she had told him personally. He certainly mentioned Bessie Turner's name, and said that the information came from her; whether from her directly or not, Sir, I don't remember. I think it did.

Q. What was the information that he stated as coming from Bessie Turner concerning her relations with Theodore Tilton? A. That the story was that Theodore Tilton had carried her from her bed to his own; some such story as that.

Q. In the night? A. I don't remember whether it was in the night, Sir. I suppose it was in the night.

Q. Well, didn't you understand it to have been in the night? A. I suppose I did; yes, Sir.

Q. And didn't you understand that he had attempted to detain her in bed for some little time? A. I didn't understand anything, except that he had taken her from her bed, Sir; that is all.

Q. And carried her to his own? A. Yes, Sir.

Q. In the night time? A. Yes, Sir.

Q. Did you understand whether he had got in bed with her? A. I didn't understand that, Sir.

Q. Did you understand that there was only one instance of that? A. That is all, Sir.

Q. Did you understand that she had represented him as on another occasion coming to her bed in the night? A. No.

Q. You never heard of but one transaction? A. That is all, Sir.

Q. In regard to Bessie Turner? A. That is all.

Q. When that was told to you what did you say about it? A. Well, I said I could not believe that story, it seemed to me entirely improbable.

Q. What did Mr. Beecher say? A. He said that was the story; that is all.

Q. Did he speak of that as one of the stories that he had mentioned to Bowen? A. No, Sir.

Q. He did not? A. No, Sir.

Q. What other stories did he say that he had mentioned to Bowen? A. That is the only one that I call to mind—the Bullard story.

Q. That is the only one of which he gave you details? A. Yes, Sir.

Q. But did he say that he had mentioned to Mr. Bowen other stories concerning Theodore Tilton? A. No, Sir; I think that is the only one—the Bullard story.

Q. Do you mean to say that Mr. Beecher did not mention any other names? A. That is all that I recollect, Sir; that he told me that he had mentioned Mrs. Bullard's name to Mr. Bowen.

Q. Did he say or not that he had told Bowen of other stories concerning Tilton, without mentioning names? A. I don't remember that he did.

Q. You don't remember that he did? A. No, Sir.

Q. Now, when he told you about Bessie Turner, didn't you express yourself concerning that story to him more strongly than you do now? A. I don't know whether—I don't remem-

ber whether I did or not, Sir; the substance of what I have said to you I stated to him.

Q. Did he tell you at the time that Bessie Turner had told other people of this story besides yourself? A. I think that he may have told me that, Sir.

Q. You learned the fact either from Mr. Beecher or some one else that she had told this story to other people, did you not?

Mr. Beach—Wait one moment. What he learned from other people I object to.

Mr. Evarts—That was not the question, if your Honor please; that he heard it *either* from Mr. Beecher or other people.

Judge Neilson—If he heard it from other people, it is immaterial.

Mr. Evarts—That is not our question, if your Honor will allow me. We are trying to find out whether he heard it from Mr. Beecher.

Judge Neilson—Yes.

Mr. Evarts—That the story had been told to other people. The witness is not certain about that, as I understand. Now we ask him whether, either from Mr. Beecher or from some one else, he had heard that she had told the story to others—as a part of the further examination. “Now don’t you remember that you heard it from Mr. Beecher?”

Judge Neilson—Whatever Mr. Beecher said is to be received, not beyond that.

Mr. Evarts—That is our point, of course, to get at what he said, and to probe him to get at it.

Mr. Tracy—Your Honor rules out the question as it stands?

Judge Neilson—So far as it relates to other people.

Mr. Tracy—Your Honor will note our exception.

Judge Neilson—The current rumors of the town I do not wish to hear.

Q. At the time you were having this interview with Mr. Beecher about Bessie Turner, did you know at that time that Bessie Turner—had you heard or did you know at that time that Bessie Turner had told the story to other people besides Mr. Beecher? A. No; I did not know at that time.

Q. Now, at this interview on the first of January was the Winstead matter again talked about between yourself and Mr. Beecher? A. No, Sir; I think not, Sir; no.

Q. Was anything further said about the stories that Bowen had told concerning Beecher at that time—or Tilton, I mean? A. I think not.

Q. That Bowen had told concerning Tilton? A. No; I think not.

Q. Was not the subject of Mr. Tilton’s relations with another lady a matter of conversation between you and Mr. Beecher? A. No, Sir.

Q. Did you never hear from Mr. Beecher at any time that Mr. Bowen had reported to him the name of another woman with whom Mr. Tilton was connected? A. No, no.

Q. Had you heard at the time you were talking with Mr. Beecher, that Mr. Bowen had charged Mr. Tilton with having made an improper proposition to another lady, and that — A. No, Sir.

Mr. Beach—[To the witness.] Wait one moment; please do

not answer; his question was not finished; and I do not get an opportunity to object.

The Witness—Pardon me, Sir.

Q. Did you never hear that?

Mr. Beach—That is objected to.

Judge Neilson—Ruled out.

Q. Did you never hear it from Mr. Tilton or from Mr. Beecher?

Mr. Beach—Hear what?

Mr. Tracy—That Bowen had charged Mr. Tilton, prior to discharging him, with improper relations, or with an improper attempt in respect to another woman? A. Did I ever hear it?

Q. From either Tilton or from Mr. Beecher?

Judge Neilson—That Bowen had so charged?

Mr. Tracy—That Bowen so charged? A. I don’t recollect that I did; I don’t recollect that.

Q. Are you sure that you did not? A. I haven’t any recollection about it now, Sir.

Q. At that interview of Jan. 1st, did Mr. Beecher mention to you that his wife had taken an active interest in behalf of Mrs. Tilton as against her husband? A. Not at that interview; my recollection is, that it was not at that interview, Sir; it was the interview of Dec. 31st; I spoke to him about it myself.

Q. You think that that subject was not referred to again in this conversation at Jan. 1st? A. My recollection is that it was not.

Q. Well, what subjects did you and Mr. Beecher converse about on that day; just name the topics of conversation so far as you can remember? A. The effect of the recantation upon Theodore Tilton; Mr. Beecher’s expression of contrition for the crime that he had committed against Elizabeth Tilton and Theodore Tilton, and his expression of regret that he had mentioned Mrs. Bullard’s name to Mr. Bowen; those are the three distinct subjects that I now recollect.

Q. And the only three that you recollect? A. Those are the three, Sir.

Q. I understand you now to say that it was on Dec. 31st that Mr. Beecher told you that Mrs. Beecher and himself had been taking an active part with Mrs. Tilton against her husband? A. My recollection is that way; yes, Sir.

#### MISSION OF THE LETTER OF CONTRITION.

Q. Now, when you began to write this letter, you say Mr. Beecher dictated it? A. Yes, Sir.

Q. Did he dictate all of it? A. Yes, Sir; he dictated all of it.

Q. Every word that you wrote on that paper was dictated by Mr. Beecher? A. My recollection is, Sir, that I put over the top of it, “In Trust with F. D. Moulton,” myself, either before or after the letter was finished.

Q. Can you tell which? A. I think it was put over before, Sir.

Q. And that part of it was not dictated by Mr. Beecher? A. That part of it was not dictated by Mr. Beecher; my recollection.

Q. Was everything else on the paper dictated by Mr. Beecher?

A. Every word, Sir, with the exception of that that he wrote himself.

Q. Did he dictate it, sentence by sentence? A. He did.



Q. And you wrote it down, sentence by sentence, as he dictated it? A. I did.

Q. Will you produce that? [Letter produced.] Did he dictate the words, "My Dear Friend Moulton?" A. He did.

Q. Have you, from Mr. Beecher, during the four years of correspondence, any other communication from him that commences, "My Dear Friend Moulton?" A. I am sure I don't know, Sir, whether I have or not.

Q. Don't you know whether you have or not? A. I do not.

Q. Can you recall a single one which he ever commenced, addressed to you in that way? A. I cannot, Sir; I cannot recollect the way in which any of them commences.

Q. He has written you a great many letters, has he not? A. He has.

Q. You put the words, "In Trust with F. D. Moulton," at the head of the paper, and Mr. Beecher at the bottom of it? A. Yes, Sir.

Q. Did you have any conversation about what that meant—what it was—

Mr. Fullerton—One moment; that is a mistake. It is a misstatement of what is there; it is an incorrect quotation from the paper.

Mr. Tracy—Well, it is, in one sense, that it is not literal—literally repeating both phrases; but, with that exception, it is as near literal as one expression can make the two; and it is a declaration of trust at the bottom and foot of the letter.

Q. Now, did you have a conversation with Mr. Beecher as to the nature of this trust? A. I think I did; yes, Sir.

Q. What was to be the nature of the trust in which you took that letter—that paper? A. I was to do with that paper, as a friend of Mr. Beecher, what I thought it was judicious to do with it—was to show it to Theodore Tilton—was to show it to Theodore Tilton.

Q. Judicious with reference to what object? A. With reference to the reconciliation of the differences between Mr. Tilton and Mr. Beecher.

Q. You were to show it to Mr. Tilton? A. Show it to him, or hand it to him, and let him read it through.

Q. Which? A. Anything that I chose to do with it; it was an absolute trust with me, to do with it as I saw fit.

Q. To use for that object? A. Yes, sir.

Q. What else were you to do with it? A. What else was I to do with it?

Q. Yes. A. Anything that I chose, in accordance with that purpose.

Q. Were you to part with it? A. Was I to part with it? No, Sir; I was to keep it; not to part with it, Sir, to anybody but Theodore Tilton.

Q. Were you to part with it to Theodore Tilton? A. To do anything with it with regard to Theodore Tilton that I chose for the purpose of reconciliation.

Q. Were you to give it to Theodore Tilton? A. Give it to him, if I saw fit.

Q. What was said about it? A. That is the purport of what was said about it.

Q. Was it said that you could deliver this paper to Theodore

Tilton, and leave it with him if you saw fit? A. There was no restriction whatever put upon my action with regard to it.

Judge Neilson—Then that was not said, as I understand? A. No, Sir.

Q. That was not said? A. No, Sir.

Q. Was anything said except what would be implied by the phrase, "in trust"? A. I told Mr. Beecher that I thought it better—that these words better be put over the top of it: "In Trust with F. D. Moulton," in order that that letter might be under my control; that was the point, Sir.

Q. And it was put there for that purpose? A. Yes; by me.

Q. Now, was there anything further said than what you have now stated in regard to the nature and object of this trust? A. I don't recollect, Sir, at present, that there was.

Q. When I say, "by what you have now stated," I mean what you have last repeated. A. Yes, Sir.

Q. You understand the question? A. Well, Sir; will you repeat it, so that I may understand it fully; perhaps I do not.

Q. Was there anything else said as to the nature and object of this trust, except that it was put there to show that this letter was to remain in your custody and under your control? A. Under my control; I don't think there was anything else.

Q. Nothing else said about that? A. I do not remember that there was.

Q. Now, what did you do with this paper when you got it? A. I took it to Theodore Tilton after I left the house and read it to him.

Q. Same night? A. Yes, Sir.

Q. Did you give it to him? A. I don't know whether I handed it to him or not to read, or whether I read it to him; my impression was—is, that I read it to him.

Q. Will you say that you did not deliver this paper to Theodore Tilton and leave it with him for a time? A. I did not leave it with him for any time that night, Sir; I don't think I did.

Q. That night? A. He did not take it away from the house, if that is what you mean.

#### HOW MOULTON DISCHARGED THE TRUST.

Q. No, that is not my question. Didn't you deliver this paper to Theodore Tilton and leave it with him for a time? A. Well, Sir, I don't recollect whether I did or not.

Q. Do you recollect that you did not? A. I haven't any recollection, Sir, as to whether I read it to him; as to whether I read it to him, or whether he took it from my hands to read, my recollection is not specific as to either point.

Q. If he took it from your hands to read, have you any recollection as to how long he kept it? A. I have not.

Q. Can you say that Theodore Tilton did not have this paper in his possession for at least one hour on the night you obtained it? A. I could not say that he had not, Sir.

Q. No, Sir. Can you say that he did not have it for two hours in his possession? A. Well, my recollection, Sir, would be that he had not. If I was to state my recollection—that he hadn't it for two hours.

Q. He didn't have it for so long as two hours? A. No, Sir.

Q. What did you do on receiving it back from Mr. Tilton?

Mr. Morris—He has not said he received it back, yet.

Q. Did you come in possession of the paper?

Mr. Morris—He has not said he parted with it, yet.

Mr. Tracy—We know what he said. When do you next recollect being in possession of this paper?

Mr. Morris—Now, I submit that he has not said that he recollects being out of possession of it yet. The question assumes a fact that has not yet been proven.

Mr. Tracy—I assume the fact that he has been in possession of it. Now, I ask when he next remembers definitely of being in possession of this paper?

Mr. Morris—The point is that he has not stated yet that he was ever out of the possession of it.

Mr. Evarts—[Earnestly.] The point is this: that he don't recollect. Now, we want him to recollect when he knows he had it. [Laughter.]

Mr. Morris—Well, that is another question. The question is not a proper question, and I object to it.

Judge Neilson—If you handed this to Mr. Tilton at all, did he hand it back to you? A. I think he did, Sir.

Mr. Tracy—Don't you know whether he handed it back to you that same evening or not, if he had it? A. If he had it?

Q. Yes. A. My recollection is that the paper was not out of my possession all that night; that I had it.

Q. Then you remember definitely of having had it the next morning, do you? A. I don't remember definitely having had it the next morning.

Q. What did you do with it that night or the next day? A. I put it in my bureau drawer.

Q. When did you put it in your bureau drawer? A. That night.

Q. Sure? A. I think so, stating to the best of my recollection.

Q. What time of night? A. After I got through with Theodore Tilton.

Q. What time of night was it? A. I don't remember.

Q. You don't remember? A. No.

Q. When did you next see this paper? A. I don't remember when I next saw it, Sir.

Q. Well, when do you next remember of having seen it? A. Distinctly, Sir, after the Victoria Woodhull publication, I remember, in your presence.

Q. Do you mean to say that you have no recollection of having seen this paper from the time you put it in your bureau drawer in December, 1870, until after the Woodhull publication? A. I don't remember anything about it, Sir, definitely, up to that time.

Q. Now, which publication was that of the Woodhull's that you refer to? A. The publication of the Victoria Woodhull story.

Q. 1872? A. Yes, Sir; 1872, I think.

Q. Well, when you wanted this paper after that publication, did you find it in your bureau drawer? A. No, Sir; found it in a tin box.

Q. In a tin box? A. I must have taken it from the bureau drawer and put it in the tin box, I suppose.

Q. Where was the tin box? A. The tin box was in my house.

Q. Was that paper never in your safe? A. I don't think that the confession—that that paper was ever in my safe, Sir; I don't remember that it was.

Q. In New-York? A. I don't think it was.

Q. And where was the tin box kept in your house? A. Kept in the closet in my front chamber, I think.

Q. Locked? A. Yes, Sir; locked.

Q. With what sort of a lock? A. Little padlock.

Q. One of those little cheap padlocks? A. Locked with a small lock, Sir, about so—

Q. Do you remember of ever having had that tin box out in presence of Theodore Tilton from the time of receiving this letter of December, 1870, until after the Woodhull publication? A. I don't recollect distinctly the occasion; I may have had it out, Sir.

Q. Don't you know you had it out frequently in his presence? A. No, I don't remember that I had it out frequently in his presence, Sir.

Q. Well, then, at the next time that you remember of having seen this paper, do you also remember that Theodore Tilton had a copy of it? A. No, I don't remember that he had a copy of it.

Q. When did you first know that Theodore Tilton had a copy of it? A. It was either—I think that the Bacon letter, Sir, or else the "True Story" letter, if the thing was in that; it was in one or the other, but I don't think it—

Q. Well, those two transactions or stories are some ways apart, are they not? When was the "True Story" prepared? A. I don't know; I believe it was prepared in the latter part of December, 1872.

Q. And when the Bacon letter? A. The Bacon letter was in eighteen hundred and—this year, wasn't it—last year, 1874.

Q. And now do you mean to say that you can't tell on which occasion it was that you found Mr. Tilton had—do you mean to say that you can't tell at which date it was you first knew that Theodore Tilton had a copy of this paper? A. I can't, no; not to swear to it now; I don't remember, Sir, whether it was in the "True Story" or not; that is the reason that I can't swear here.

Q. You never remember to have seen the paper until after the Woodhull publication, and you never remember to have known that Tilton had a copy of it until one day that you speak of? A. No; that is the best of my recollection now?

Q. How did you find out that he had a copy of it then? A. The Bacon letter?

Q. This—when you did know it—when you learned that he had a copy, how did you learn it? A. Learned it from him.

Q. From him? A. From the publication of the Bacon letter, when he read it to me.

Q. Do you mean then to say that that was the first time that you knew that he had a copy? A. That is the first time, to my recollection.

Q. Now, Sir; didn't he make a copy of this letter in your presence the very night you read it to him, and the first night you received it from Mr. Beecher? A. No, Sir; I don't recollect that he did.



Q. Do you recollect whether he did or not? A. My recollection is that he did not, Sir.

Q. And will you swear that you did not know that he made a copy of that letter that night before you put it in your bureau drawer? A. Yes, Sir; I should swear to that, Sir.

Q. Didn't Mr. Tilton write that letter down, this letter down, in shorthand or otherwise, at the time you read it? A. I don't recollect that he did; my recollection is that he did not.

Q. Your recollection is that he did not? A. My recollection is that he did not, Sir.

Q. Now, we will come back to the composition of the letter. Well, I will ask this question before I come back to the composition of the letter: If he didn't do it on that night, did you ever give him any other opportunity to make a copy? A. I may have shown him the letter, Sir; if he asked me for it, very likely I did.

Q. Will you say whether you did not? A. I cannot say whether I did or not. I say that if he had asked me for it, I very likely should.

Q. That is not an answer, Sir. I am not asking what you very likely should, but I am trying to ask what you remember that you did? A. I don't remember that I did, Sir.

Q. Then, so far as you know, up to the publication of the Bacon letter, Tilton had no other opportunity to make a copy?

Mr. Beach—The witness has said that he was uncertain whether it was at the time of the Bacon letter or at the time of the true statement.

Mr. Evarts—We understand it not. In the later answer of the witness he fixed the Bacon letter as the date when he first knew it.

Mr. Beach—He did not.

Mr. Evarts—I will refer to the stenographer.

Mr. Beach—The witness was carried to that result by a leading question assuming that fact, and in the face of his direct explanation that he was uncertain which of those periods was the time when he obtained that information.

Mr. Evarts—We have our views of the testimony, Sir, and we do not like to be interrupted in the cross-examination. If there is any question of it, the stenographer's note can be appealed to.

Mr. Beach—Well, Sir, although the counsel may not like to be interrupted, when I object to a question it seems to be a necessity that he should be.

Mr. Evarts—You stated in the previous testimony.

Mr. Beach—My objection to the question was, Sir, that it improperly assumes that the first knowledge of the witness that Mr. Tilton had a copy of this letter was at the publication of the Bacon letter.

Judge Neilson—I understand him that he got to know the fact certainly when he saw it in the Bacon letter, but he cannot say when he got the copy.

Mr. Evarts—That we understand.

Mr. Beach—Well, your Honor is under a wrong impression. I submit in regard to the testimony of the witness upon that subject, for the witness explicitly stated that he could not say when he first received that information whether at one time or the other.

Judge Neilson—Well, then, it is qualified in that way.

Mr. Evarts—Afterwards corrected.

Judge Neilson—But he got to a certainty of it when he saw the Bacon letter.

Mr. Beach—I insist that he did not afterward correct it.

Mr. Evarts—That is for the stenographer to decide.

Mr. Beach—That is for us to decide when the question is based upon an improper assumption of fact.

[Question read by THE TRIBUNE stenographer.]

Judge Neilson—"So far as you know or recollect;" please to qualify it in that way.

The Witness—Will you read the question again, Mr. Stenographer?

[Question re-read by TRIBUNE stenographer.]

Judge Neilson—Insert "or remember" after the word "known."

Mr. Evarts [to the witness]—There is no objection. A. I don't recollect, Sir, that he had.

Mr. Tracy—Now, do you know how Mr. Tilton got the copy that he made—that he had—when you read the Bacon letter? A. I don't know specifically; no, Sir.

Q. You say you don't know specifically? A. No, Sir.

Q. Do you know? A. No, Sir.

Q. That is an answer? A. Yes, Sir.

Q. Did you ever give him a copy? A. No, Sir.

Q. Did he ever take a copy with your knowledge? A. Not that I remember, Sir.

Q. Don't you remember whether he did or not? A. No.

Q. Do you mean to say now that you don't remember whether you gave him a copy of this letter?

Mr. Fullerton—That has been answered over and over again.

Judge Neilson—He said he had not given him a copy; I think he has answered that point clearly; he did not furnish a copy, and he don't remember how he got the copy.

Q. Did you give him an opportunity to make or take a copy of it?

Mr. Beach—Now, I submit to your Honor that the witness has stated upon the previous examination that he might have handed that letter to Mr. Tilton, and that, undoubtedly, if Tilton applied to him for it, he did so.

Mr. Tracy—Now, that is reasoning; we want to get facts.

Mr. Fullerton—There we have the advantage of you.

Judge Neilson—I think the witness has answered fully.

Mr. Evarts—Well, if your Honor please, we regard this testimony as important, as subsequent testimony will show, and we do not want to be retarded in our cross-examination by the objections of our learned friends if our questions are proper.

Judge Neilson—Do you think it proper to repeat a question again and again?

Mr. Evarts—No, Sir. We do think it proper, and fair to the witness also, to have his answers explicit, he understanding what the question is. Now, he says he don't know how Mr. Tilton got the copy. That is answered; we do not repeat that question. We ask him now, did you ever give, in fact, Mr. Tilton an opportunity to take or make a copy of that paper?

Judge Neilson—Hasn't he answered that?

Mr. Evarts—Let him answer it if he can.

Judge Neilson—Well, what is the answer to that question?

The Witness—To me or to the stenographer, Sir?

Judge Neilson—To you? A. I don't recollect, Sir, that I ever gave him an opportunity.

Judge Neilson—Well, so I understood before.

Q. Now, Mr. Moulton, you were educated at the New-York Academy, now called the New-York College, were you not? A. Yes, Sir.

Q. Since you have been in the firm, you have carried on very much of the correspondence of your firm, have you not? A. Not very much of it.

Q. Not very much of it? A. No, Sir.

Q. Whose department is that? A. Mr. Woodruff's and Mr. Maclay's.

Q. You write well, or compose well, do you not?

Mr. Fullerton—Well, I don't suppose that that is—

The Witness—I don't think I do, Sir.

Judge Neilson—He has made the same answer I would make.

The Witness—I don't think I do; thank your Honor.

Q. Well, you carry on a large correspondence, do you not? A. No, Sir.

Q. You do not? A. No, Sir; I do not.

Q. A large correspondence? A. No, Sir.

Q. You write many letters every week, do you not? A. No, Sir.

Q. Do not? A. No, Sir.

Q. Do you not carry on a correspondence with literary people? A. No, Sir.

Q. Have you never? A. Yes—slightly.

Q. You understand the rules of composition and punctuation, do you not?

Mr. Fullerton—I object to this—just one moment.

The Witness—[Answering.] Not very well.

Mr. Fullerton—It is trifling with the time of the Court.

Mr. Tracy—It may be.

Mr. Fullerton—It not only may be, but it is.

Mr. Tracy—Well, that is for the Court.

Judge Neilson—He has answered that question.

Q. Do you understand, after a period, how you should commence the next sentence—whether with a capital or a small letter? A. Yes, I do. [Laughter.]

Judge Neilson—Will the audience keep quiet, please.

Mr. Fullerton—Well, if the counsel are asking these questions for their own information, I won't object. [Renewed laughter.] It seems to me to be trifling.

Judge Neilson—Will the audience please be— [To Mr. Evarts, who was rising,] If you say a word, it will be something that will excite commotion among the audience. Will you please be quiet? Proceed, Mr. Tracy.

#### THE LETTER OF CONTRITION ANALYZED.

Q. Now, Mr. Moulton, I understand you to say that Mr. Beecher dictated this letter sentence by sentence? A. Yes, Sir.

Q. And you wrote it down, sentence by sentence, as he dictated it? A. Yes, Sir.

Q. And he dictated it deliberately? A. Yes, Sir.

Q. And you wrote it deliberately? A. Wrote it as he dictated it.

Q. Did you write all that Mr. Beecher said? A. Every word.

Q. And you say that this letter was not written hastily and as rapidly as you could write it? A. It was written as rapidly as I could write it.

Q. Was it written hastily? A. Written rapidly; I don't know what you mean by hastily.

Q. Written rapidly; very well. Was it written by you in the effort to catch the sentences as Mr. Beecher was speaking them? A. As he uttered them for me to write down—as fast as it was necessary to write for that purpose I wrote.

Q. And you wrote after a man who was dictating, rather than after a man who was talking and whose sentences you were seeking to catch as he talked? A. Yes, Sir; a man dictating.

Q. [Handing paper to witness.] Is that your usual handwriting? A. It is a little more distinct than usual. I usually write with a steel pen? This looks as though it was written with a quill.

Q. Do you remember whether you wrote with a steel pen, a gold pen, or a quill? A. I cannot recollect. This looks as though I wrote with a quill pen.

Q. As matter of recollection, do you recollect what sort of a pen you wrote with? A. I cannot recollect whether it was a quill pen or a steel pen.

Q. Was it one or the other? A. My impression is that it was a quill pen.

Mr. Evarts—You mean steel or gold pen?

Mr. Fullerton—No; he means quill pen.

Mr. Evarts—You mean quill, or steel, or gold?

Mr. Fullerton—He says it is his impression he wrote it with a quill pen.

Mr. Tracy—I desire now to read this letter with the punctuation and the writing. I want it read as it is written.

Mr. Shearman—I will read this exactly as it is written here.

Mr. Fullerton—Of course you will.

Mr. Shearman—It never has been read as it is written.

Mr. Fullerton—I beg your pardon, Sir, it has been.

Mr. Evarts—No, Sir, not read with the punctuation. He didn't read the punctuation.

Mr. Fullerton—You don't read punctuation; you observe it.

Mr. Shearman [reading]:

BROOKLYN, January 1, '71.

In trust with F. D. Moulton.

I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God, he would have been a better man, in my circumstances than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead. I even wish that I were dead, but others must live and suffer. I will die before any one but myself shall be inculpated. All my thoughts are running toward my friends toward the poor child lying there and praying with her folded hands; She is guiltless. Sinned against bearing the transgressions of another Her forgiveness I have, I humbly pray to God that he may put it into the heart of her husband to forgive me.

I have trusted this to Moulton in confidence.

H. W. BEECHER.

The Witness—That is correct.

Mr. Shearman—I have read this as it was written. The word



"I can't" is corrected by striking out the "t." After the words "I will not plead," there are subsequently inserted the words "for myself," but the color of the ink is different where the "t" is crossed and where the words "for myself" are inserted.

Mr. Beach—Now the question rises whether the gentleman has read it according to the punctuation.

Mr. Evarts—That will be for the jury.

Mr. Fullerton—The gentleman promised to read it as it was, and when he got through he confessed he read it as it was not.

Judge Neilson—I thought he read it very well.

Mr. Fullerton—Oh! he read it very well.

Mr. Evarts—He read it according to the original edition, but not according to the revised edition.

Mr. Tracy—You say Mr. Beecher dictated all that first sentence as a single sentence, do you?

Mr. Fullerton—He didn't say that.

The Witness—I said he dictated every word of it.

Mr. Tracy—I ask you whether Mr. Beecher on that occasion dictated everything, down to the first period marked in that letter, as a single sentence?

Mr. Morris—There is one point, if your Honor please, I desire to say a word in reference to. The counsel attempted to give a false impression with reference to this letter, and spoke about the different colored ink. Now, the whole letter makes it manifest that the pen did not deliver the ink freely, and a part of many of the words, sometimes the middle of a word, will be pale. For instance, the beginning of that word is one color and the two letters "g" "h" are pale and the "t" is black, showing the pen did not deliver the ink regularly and uniformly.

Mr. Evarts—If you please, we object to all this. It is quite competent for our learned friends to comment on this manuscript. It does not falsify our comments that they can make others.

Mr. Beach—It does answer their comments when they are incorrect.

Mr. Evarts—We call the witness's attention to it, and it is the honest way, before he leaves the stand, and we intend to do it.

Judge Neilson—Some impressions are created on your part in reference to the letter or the ink of the letter in this writing, which perhaps justifies the counsel on the other side making a remark on the subject.

Mr. Tracy—I ask you whether Mr. Beecher on that occasion dictated everything down to the first period marked in that letter as a single sentence.

Mr. Beach—The witness has said no such thing.

Mr. Tracy—I know that, and that is the reason I ask him.

THE TRIBUNE stenographer was here directed by the Court to read the last question to the witness, which he did.

Mr. Beach—I was mistaken.

Mr. Tracy—I am glad you acknowledge for once you are mistaken.

Mr. Beach—You will find me always ready to acknowledge my mistakes. They are very frequent and common.

Mr. Fullerton—You are consuming a great deal of time. We want you to go on with the case.

The Witness—What is the close of the sentence?

Q. Did Mr. Beecher dictate the letter down to the word "been," in the language I have read as a single sentence? A. He dictated every word. If your Honor will allow me to explain—

Mr. Tracy—Answer my question first.

The Witness—I cannot answer it yes or no without an explanation.

Judge Neilson—[To Mr. Tracy.] That answers your question yes or no.

The Witness—I want to explain that answer, if your Honor will allow me.

Mr. Tracy—No; if you cannot answer that question, that is all.

The Witness—Very well.

Judge Neilson—Put another question.

Q. Can you remember what the first sentence was that Mr. Beecher dictated in that letter? A. Every word of the letter he dictated.

Q. I didn't ask you that. I ask you what the first sentence was that he dictated? A. I wrote the words just as they came from his lips, and I cannot tell you the first sentence that he dictated.

Judge Neilson—Did he dictate it in the order in which it is there? A. Yes, Sir; that is what I wanted to explain.

Mr. Tracy—You cannot tell the first sentence that he dictated; do you say that? A. The words in the first sentence of this letter, he dictated every word of it.

Q. You have said that he dictated it sentence by sentence, and that you wrote it sentence by sentence as he dictated it. Now, I ask you if you can tell us what the first sentence was that he dictated as a sentence and that you wrote as a sentence? A. I can tell you what I understand about it; my understanding is, the first sentence he dictated was, "I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been." That is my recollection of the first sentence he dictated.

Mr. Fullerton—It is proper here that I should call attention to one fact.

Mr. Tracy—I submit it is not.

Mr. Fullerton—I ask the permission of the Court to do it.

Mr. Evarts—I object.

Mr. Fullerton—I understand you object, but notwithstanding that objection I call the attention of the Court to one thing in connection with the writing of this paper just at that point.

Mr. Evarts—I object to it, and don't go on until his Honor rules on my objection.

Mr. Fullerton—I shall go on.

Mr. Evarts—I object to his calling any attention to any fact while we are cross-examining this witness on this paper. Let him call attention to it afterwards.

Mr. Fullerton—I think it ought to be stated now because it is a misreading of the letter.

Judge Neilson—Then you can correct it on the re-direct.

Mr. Evarts—We have a right to cross-examine this witness.

Judge Neilson—I don't need to be told that. The learned counsel on both sides are so anxious to argue that I quite understand it. [To Mr. Fullerton.] I think you had better reserve it for your re-direct; it may be a serious matter.

Mr. Fullerton—I will reserve it, and it will be a serious matter.

Mr. Tracy—We are as serious as a pickle here.

Mr. Fullerton—Yes, and you grow more and more so.

Mr. Tracy—Yes, Sir; my nature is very serious.

Judge Neilson—The only objection now to what Mr. Fullerton thought himself called upon to say is that some suggestion on his part might put the witness on his guard.

Mr. Fullerton—Nothing of that kind was in my mind.

Judge Neilson—That might be in your mind.

Mr. Beach—We cannot know that until we hear the suggestion. It may be entirely proper, but you won't hear it. There is no reason it should be given if the other side object.

Mr. Tracy—I don't think there is any delay on account of my putting questions.

Judge Neilson—I don't know.

Mr. Tracy—Will you tell us the next sentence that Mr. Beecher dictated as such that you wrote as such in that letter? A. I can tell you the next sentence that I wrote as such.

Q. Can you tell us the next sentence that he dictated as such and that you wrote as such? A. I can give you every word he dictated in the sense that I understand it.

Mr. Tracy—That will be satisfactory.

The Witness—"I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself. I even wish that I were dead but others must live and suffer."

Q. What was the next sentence? A. "I will die before any one but myself shall be inculpated," is the next sentence.

Q. What next? A. "All my thoughts are turning toward my friends."

Q. Turning? A. Running.

Q. Which is it? A. I think it is running.

Q. Have you any doubt about that? A. No, Sir; I don't think I have.

Q. Go on. A. "Running toward my friends, toward the poor child lying there praying with her folded hands; she is guiltless."

Q. Is there a full stop after the word "hands"? A. No, Sir; a semi-colon. "She is guiltless, sinned against, bearing the transgression of another;" that is the sentence—the next sentence that Mr. Beecher dictated to me, as I recollect it.

Q. Is there a period after the word "guiltless," or not? A. No, Sir; a comma.

Q. What is the next? A. "Her forgiveness I have. I humbly pray to God that he may put it into the heart of her husband to forgive me." That is the next sentence which I recollect that Mr. Beecher dictated.

Q. How long were you writing that paper? A. Not very long.

Q. About how long should you say? A. Long enough to write it; I don't know. It was dictated right straight along.

Q. Do you write rapidly, or otherwise? A. Oh! fairly, Sir; not very rapidly, nor very slow.

Q. Now, do you not write with a good deal of difficulty, mechanically, Mr. Moulton? A. I don't think I write with a great deal of difficulty.

Q. When you are with either Mr. Beecher or Mr. Tilton, are you in the habit of having them dictate to you and you write, or is it your habit to have them write and submit to your criticism? A. I cannot say that there is a habit either way.

Q. Of the numerous letters and correspondence that have passed between you and Mr. Beecher, that have been written by Mr. Beecher, can you name a single instance where he dictated any other paper than this, and you wrote it? A. I don't recollect any such instance.

Q. Any such instance? A. No, Sir.

Q. During the four years? A. I don't recollect any such instance.

Q. Now, Mr. Moulton, is that in your ordinary handwriting in respect to the size of the letter, and the matter on a page—the smallness of the matter on a page? A. Is that in my ordinary handwriting?

Q. Yes, Sir. A. No, Sir, I don't ordinarily write with a quill pen.

Q. Is it your ordinary style to spread so little matter over so great a space? A. Well, to spread a very little matter over a very great space?

Q. Is it your ordinary style to spread so little matter over so great a space as you have here? A. I don't know that I can answer that without an explanation. I write a very irregular hand, if your Honor will allow me to say so; I write sometimes one way, and sometimes another.

Q. You mean to say you cannot answer the question whether you ordinarily spread as little matter over so great a space or not? A. I think I have often done it, Sir.

Mr. Beach—I think the counsel has given us an example of spreading very little matter on a very great space.

Q. When did you next see Mr. Beecher after you left on the 1st of January? A. On the 2d, I think.

Q. Where? A. At his house.

Q. What room in his house? A. I think I met him, Sir, in the parlor or back parlor, and went up stairs with him from the parlor?

Q. Into what room? A. I don't remember what room.

Q. Do you remember whether your interview was in the study or not? A. I don't remember distinctly whether it was in the study or not.

Q. Do you remember who let you into that room on that occasion? A. On January 2d?

Q. Yes, Sir? A. No, Sir; I don't remember now. January 2d, I mean.

Q. What time of day did you go there? A. I think in the afternoon, somewhere about five or six o'clock.

Q. Five or six o'clock? A. Somewhere about that; between four and six o'clock.

Q. How long did you remain? A. Not very long.

Q. About how long? A. I don't recollect. I think perhaps an hour, perhaps half an hour or an hour; it may be two hours. I cannot remember it, it is so far back.



Q. Was your interview with him on that occasion alone? A. Yes, Sir.

Q. Was it on that day that he showed you the draft of this letter that he had prepared to send to Mr. Bowen? A. Either that day, or a day or two after; I think it was on that day.

Q. Did he read it to you on that day?

Mr. Tracy—[To plaintiff's counsel.] Gentlemen, will you give me that Exhibit?

Mr. Morris—What one?

Mr. Tracy—The letter of January 2d.

Mr. Morris—You must call for them by the numbers. We cannot furnish them unless you call for them by the numbers.

Mr. Tracy—Did you understand the last question that I put to you? A. I don't know really that I do.

Q. Did he read it to you on that day? A. Either that day or the day after.

Q. What did you say on his reading that letter to you? A. I don't recollect precisely what I did say; substantially that it was just.

Q. It was just and truthful, as far as you understood it? A. Yes, Sir; very likely that.

Q. And did you understand yourself to be the party of whom he spoke when he said, "On the assurances of one," so-and-so, "I am satisfied that my statement did him justice?" A. Yes, Sir.

Q. You were the party? A. I think so; yes, Sir.

Q. And so understood yourself? A. Yes, Sir.

Q. On whose assurances he wrote that letter? A. Yes, Sir.

#### TILTON'S UPBRAIDING OF BOWEN.

Q. Now, I understood you to say, on your direct examination, that on January 2d it was that you told Mr. Beecher that Mr. Tilton was writing a letter to Mr. Bowen? A. I think it was on that day—yes, Sir. Mr. Tilton was writing a letter on January 1st, and I think I told Mr. Beecher on that day.

Q. Is it your recollection you told him on that day? A. Yes, Sir.

Q. On January 2d? A. Yes, Sir.

Q. I understand you to say, then, that you had four different interviews with Mr. Beecher on four successive days—Dec. 30th, Dec. 31st, Jan. 1st and Jan. 2d—at the house of Mr. Beecher? A. Dec. 30th, Dec. 31st, Jan. 1st and Jan. 2d—yes, Sir.

Q. On four successive days, then, you distinctly recollect the fact of having those interviews with Mr. Beecher? A. Yes, Sir.

Mr. Fullerton—That is repeating it right over for the third time.

Q. Now, it was at that interview of January 2d that you spoke to him about Mr. Tilton preparing a letter. What did you say to him about it? A. I said Mr. Tilton was preparing a letter for Mr. Bowen, in which he was going to state substantially what Mr. Bowen had said to him (Tilton) concerning Mr. Beecher, and that I should strive to keep out of it all allusion to Mr. Beecher and to Mr. Tilton and his wife—have the letter simply express what Mr. Bowen had said to him (Tilton) concerning Mr. Beecher.

Q. Well? A. And that after Mr. Tilton had written it, I undertook to get possession of it, and hold it.

Q. For what purpose would you hold it? A. For what purpose? For the purpose of negotiating with Mr. Bowen, among others, and for the purpose of saving the families of all interested—saving all exposure of facts. I didn't approve of that letter.

Mr. Tracy—I didn't ask you that.

The Witness—Pardon me, Sir.

Mr. Evarts—Strike that out.

Q. Did you repeat that to Mr. Beecher—the substance of the stories that Mr. Bowen had told Mr. Tilton concerning him, and which Mr. Tilton was to write Mr. Bowen about? A. Did I tell him that?

Q. Yes, Sir; on that day? A. No, Sir; I don't think I told him the substance.

Q. Didn't he ask you what they were? A. No, Sir; I don't think I did.

Q. He didn't ask at all? A. I don't recollect either, to my recollection.

Q. You simply told him Mr. Tilton was writing a letter in which he was going to state what slanders or stories Mr. Bowen had told about Mr. Beecher, and Mr. Beecher did not ask you if you knew what they were? A. I don't remember that he did; a general charge—

Q. Well, what was it? A. Nothing but the general charge of adultery. I have said that before.

Q. Did you talk about that then? A. Not the specific charge of adultery; it was only charges of adultery.

Q. Did you say to Mr. Beecher on that occasion it was in regard to Mr. Bowen's charges of adultery against him? A. I think I did; yes, Sir.

Q. And you were going to get possession of that letter if you could, and use it in negotiating with Mr. Bowen?

Mr. Fullerton—He did not state that.

Mr. Evarts—He did.

Judge Neilson—Ask if he was. Your question assumes he was.

Mr. Beach—The question states but part of the purpose which the witness stated.

Mr. Tracy—The object will be accomplished. [To the Witness.] What do you say? You were going to get possession of that letter, if you could, and use it in negotiating with Mr. Bowen?

Mr. Beach—That is a statement.

Judge Neilson—Yes; that is a statement. [To Mr. Tracy.] Put your question again.

Q. Did you tell Mr. Beecher that you would get possession of that letter, if you could, in order to use it in negotiating with Mr. Bowen? A. I told him I would get possession of that letter if I could.

Q. Did you tell him the purpose for which you would get possession of it? A. Yes, Sir; I did.

Q. What was it? A. For the purpose of letting Mr. Bowen know exactly what he did to Mr. Tilton, and for the purpose of keeping peace between all the parties.

Q. Did you tell him you would use it for the purpose of negotiating with Bowen? A. Substantially that, I suppose.

Q. What did you tell Mr. Beecher was the object of having this letter written? A. Mr. Tilton wanted to publish it.

Q. For what purpose? A. To make clear by the publication the reasons for the severance of his relations with Mr. Bowen.

Q. And you told that to Mr. Beecher? A. Yes, Sir; I believe I did.

Q. And that you should prevent the publication of that letter? A. I told him I would try to do it.

Q. How did you know that Mr. Tilton was going to publish it? A. How did I know?

Q. Yes, Sir. A. He stated to me that he thought he should.

Q. Before it was written, he stated that? A. Sir?

Q. Before it was written, he stated that? A. When he first commenced to write it, the evening of Jan. 1st.

Q. Where did he begin to write it? A. At my house, I believe.

Q. At your house? A. I think so.

Q. Did he finish it on that evening? A. On the evening of Jan. 1st.

Q. Yes, Sir. A. I don't think he did finish it all.

Q. How far did it proceed? A. I do not recollect.

Q. Do you know that he did not write the whole of it on that night? A. A rough draft of it was finished at my house that night.

Q. The draft of it was finished at your house on that night? A. I think so.

Q. Jan. 1st? A. Yes, Sir.

Q. That was after you had brought the paper that you had got from Mr. Beecher on that day, to Mr. Tilton, and showed it to him? A. He was writing when I got there.

Q. And he finished it that same evening? A. I think he did—the rough draft of it.

Q. And was going to publish it? A. Yes, Sir; he thought of publishing it.

Q. He so expressed himself? A. I recollect that subject.

Q. How did you come to meet Mr. Beecher on the 2d of January. A. By his invitation.

Q. Given on the 1st? A. Yes, Sir.

Q. Was Mr. Beecher at home on the 2d, when you called? A. I think he was; yes, Sir.

Q. Now, if your statement to General Butler—

The Witness—Which one?

Mr. Tracy—Well, either. Did you say to him that Mr. Beecher asked him if he thought it would be safe for the sale of the Plymouth pews to go on? A. I think I did.

Q. And that was asked at the head of the stairs on Jan. 2d? A. I think I did; yes, Sir.

Q. And that you told him: "I told him I thought it would be perfectly safe to have the sale of Plymouth pews go on. I felt perfectly sure Mr. Tilton would do nothing against him or his family?" A. Yes, Sir.

Q. You told that to General Butler? A. Yes, Sir.

#### TERMS OF BEECHER'S PRAYER FOR HELP.

Q. Did you also tell this to General Butler: "He said that Elizabeth Tilton had sent for him to come to her house, and told him she believed her relations were wrong. And

he told me he said to her: 'If you believe these relations wrong, then they should be terminated.' And he told me that he prayed with her—prayed to God with her for help to discontinue their sexual relations." A. I think I told him that.

Q. You told General Butler that? A. Yes, Sir.

Q. As a part of this same interview?

Mr. Beach—What same interview?

Mr. Tracy—The interview I have been speaking of. [To the Witness.] At what interview did you tell General Butler that? A. I think that was the interview of Jan. 1st.

Q. At what interview with General Butler did you communicate that fact to him? A. My recollection is, it was at Bay View.

Q. At Bay View? A. I think so.

Q. Did General Butler advise you to expunge that from your statement?

Mr. Beach—That I object to.

Q. Did I understand you to say you thought this interview between yourself and Mr. Beecher in regard to prayer was on Jan. 1st? A. I had that impression when I spoke.

Q. When do you say, as a matter of fact, it was? A. I should think it was Jan. 1st.

Q. Jan. 1st that he spoke of prayer? A. Yes, Sir.

Q. And not Jan. 2d? A. That would be my impression.

Q. Do you mean to say that, on Jan. 1st, in that interview that Mr. Beecher told you he had prayed to God for help to discontinue his sexual relations with Mrs. Tilton? A. Yes, Sir.

Q. Using the word "sexual" in that connection? A. Yes, Sir.

Q. Did he say that he had used that word in his prayer? A. Did he say that he had used that word in his prayer?

Q. Yes, Sir. A. He said that he had prayed to God for help to discontinue their sexual relations. That was substantially what he said to me, as I remember it.

Q. Did he say the word "sexual" in that connection? A. He used the word "sexual," yes, Sir.

Q. Did he say that that was a part of his prayer, that he wanted help to discontinue his sexual relations? A. Will you allow me to state what he said?

Q. I asked you if he said that was part of his prayer? A. He said he prayed to God for help to discontinue their sexual relations. That is what he told me.

Q. The words "sexual relation" were the words that Mr. Beecher always used to characterize the relation between himself and Mrs. Tilton, were they? A. I don't recollect that, Sir, whether they were always.

Q. Have you repeated any other phrase, or any other word, than the word "sexual?" A. I don't know whether I have or not.

Q. Do you know whether that is a word that Mr. Beecher is in the habit of using to characterize the sexual act out of wedlock?

Mr. Beach—That I object to.

The Witness—I have heard him use a worse term.

Mr. Tracy—I did not ask you that. I ask you this, whether



the word "sexual," to characterize that act out of wedlock, is not an unusual word to use?

Mr. Fullerton—That I object to.

Judge Neilson—We all know that as well as the witness does.

Mr. Beach—Perhaps not as familiarly as some others.

Judge Neilson—We are expected to know the use of that word as well as the witness.

Mr. Tracy—Now, Mr. Moulton, did you at any time come into possession of papers written by Bessie Turner? [To plaintiff's counsel.] Will you, gentlemen, produce the Bessie Turner documents?

Mr. Morris—I don't know that I have them here; but I say to the counsel again, as I have repeatedly, all along, that if they will give a list of what they want, we will endeavor to arrange them.

Mr. Evarts—We may have to ask the witness to bring those papers, and to put them in our hands, that we may find them, or in the hands of the Court.

Judge Neilson—You can call for them from time to time as you wish them. They are safe enough where they are.

Mr. Evarts—They are safe, but we don't get them.

Judge Neilson—I suggested, the day before yesterday, that a list should be made of what letters you wanted.

Mr. Evarts—There is not any such multitude of them. They have been all through the mill, and stamped and numbered, and that is known to the public, and you can count them all. Fifty of them have already been given in evidence, and it is others that we ask for.

Judge Neilson—You must have them.

Mr. Evarts—And we are entitled to them.

Judge Neilson—Yes, Sir.

Mr. Morris—I give them notice now, again, that I am not going to spend time unnecessarily for the accommodation of counsel on the other side, when I have made so reasonable a request as I have made. They may call for papers in this way, and I will take my time to find them.

Mr. Evarts—We have that distinct notice, now, and therefore I would like to have the papers put in my hands.

Judge Neilson—It is well enough as it is. I suggested the day before yesterday that a list should be made of those you wanted.

Mr. Evarts—They are the witness's papers, brought in under my subpoena.

Judge Neilson—Well, he will produce them when wanted.

Mr. Morris—And we have a good many papers brought in under subpoena that they have no right to.

Mr. Evarts—Will the witness keep his own papers?

Judge Neilson [to Mr. Evarts]: As you want a paper call for it, and it must be produced.

Mr. Morris—I will look over my package to find the paper.

Mr. Evarts—That you can do.

Mr. Morris—That I propose to do without your permission.

Mr. Fullerton—If the Court please, if the counsel on the other side will indicate what other papers they will probably want during the present day, we will select them out from the papers in our possession.

Mr. Evarts—If my friends desire to assist us, if they will sep-

arate the papers which have not been given in evidence, and that have been brought here under subpoena, from those that have been given in evidence, it will be easy to find the few papers we want.

Mr. Morris—I understand that better than the counsel. There is a large package here, and we will have to go over them all.

Judge Neilson—Mr. Morris, do the best you can; we shall have to wait.

#### BESSIE TURNER'S LETTERS EXCLUDED.

Mr. Tracy—I will try and occupy the time of your Honor until one o'clock with another matter; I will have to pass over this matter and refer to it again. Q. Now, Mr. Moulton, was there anything said at any time in the first days of January about the future of Mr. Tilton between yourself and Mr. Beecher? A. About the future of Mr. Tilton?

Q. Yes, Sir. A. Yes, Sir.

Q. Was it talked, and in pursuance of that talk, did you try to have him reinstated upon *The Independent and Union*? A. No, Sir.

Q. Did you never have any talk with Mr. Bowen on that subject? A. Yes, Sir.

Q. When was that talk with Mr. Bowen on the subject of reinstating Mr. Tilton? A. Well, Sir, it was previous to the 15th of January; shall I tell you what I said?

Mr. Tracy—When I ask it.

The Witness—I beg pardon, Sir.

Mr. Evarts—It is not necessary for you to cross-examine us.

The Witness—I beg pardon, Sir, I did not do it discourteously.

Mr. Tracy—Previous to that, in conversation with Mr. Bowen, had Mr. Beecher sent his letter retracting the stories that he told you about Mr. Tilton.

Mr. Fullerton—I object to that. It is not fair to characterize the letter.

Judge Neilson—Previous to that time he sent the letter?

Mr. Tracy—The letter has been in evidence.

Mr. Fullerton—There is no reason why you should characterize it in that way.

Mr. Tracy—The objection to characterizing it is introducing the evidence. It is referred to as a letter.

Judge Neilson—Refer to it as a letter, or by a mark or date.

Mr. Tracy—I don't know which number. [To the Witness]—It is a letter which you say you saw the draft of on the second of January?

Mr. Fullerton—It is the letter of the 2d of January. It is the only letter of that kind in evidence.

Mr. Tracy—It is the letter of the 2d of January. Had Mr. Beecher sent that letter to Mr. Bowen before your conversation with Mr. Bowen? A. Yes, Sir; he told me he had; I don't know whether he did or not.

Q. Had you obtained, previous to that time, also a letter from Mrs. Tilton, denying she had ever desired a separation from her husband?

Mr. Fullerton—I object to that.

Mr. Tracy—Then I call for that letter also.

Q. I ask if you obtained a letter upon that subject from Mrs. Tilton?

Mr. Fullerton—I object to that.

Mr. Tracy—What is the objection?

Mr. Fullerton—That you cannot ask the contents of a letter that is in evidence.

Judge Neilson—It savors somewhat of that.

Mr. Tracy—I asked if he had got a letter on that subject. I am merely doing it to determine the letter; I am not asking for the contents of the letter.

Mr. Beach—Well, we will hand you the letter.

Mr. Fullerton—You would not tell us five minutes ago that you wanted that letter.

Mr. Tracy—I didn't want it then; I didn't know then that I would want your letter. It is only to fill up the time until one o'clock that I want it. I will try and pass on for a moment to something else.

Mr. Morris [handing Mr. Tracy two letters]—Here are the Bessie Turner letters.

Mr. Tracy [handing letters to witness]—Did you ever see those two letters, which I now hand to you, before? A. Yes, Sir.

Q. Did you bring them here under a subpoena? A. I handed them to Judge Morris to be brought here.

Q. When did they first come into your possession? A. About the time of their dates. What are their dates, General, please?

Q. One is January 12th and the other January 10th, 1871. You have had them continuously from that time until the time of delivering them to Judge Morris? A. Were they not in my statement? I think they were in my first statement.

Judge Neilson—[To the witness]: You think you have had them ever since? A. Yes, Sir; I have had them ever since.

Mr. Tracy—Do you know how you received them? A. I don't remember, Sir, exactly how I received them, whether by a messenger or by mail.

Q. What time did you receive them? A. About that time.

Q. About this time. Where was Bessie Turner living at the time? A. I think she was at Mr. Tilton's house; I won't be certain about that.

Q. What did you do with the papers on receiving them? A. Put them away.

Q. Did you ever talk with Mr. Tilton about them? A. About the letters?

Q. About these letters? A. No, Sir; not until after I got them.

Q. Until after you got them. Did Mr. Tilton bring those letters to you? A. I don't remember whether he did or not.

Q. You remember talking to him about them? A. Yes, Sir; after I got them.

Q. Did you show them to him? A. I guess I read them to him; yes, Sir, or he read them himself.

Q. And you have kept them ever since? A. Yes, Sir.

Q. And you don't know whether you received them from him or in some other way? A. No, Sir; I don't remember.

Mr. Tracy—We offer them in evidence.

Mr. Fullerton—We object to them.

Mr. Tracy—Are those the only letters that you received from

Bessie Turner, or papers signed by Bessie Turner? A. They are all that I recollect now; yes, Sir.

Q. How long after getting these papers was the arrangement made about Bessie Turner going away? A. I think it was made before I got them.

Q. Before you got them? A. Yes, Sir.

Q. Were those obtained before she went away in pursuance of the arrangement? A. In pursuance of the arrangement? I don't remember whether it was in pursuance of that arrangement or not.

Q. Perhaps you misunderstand my question. Had she gone away in pursuance of the arrangement before you received the letters, or did she go away after? A. I don't know whether she went away before or after.

Q. In other words, you don't remember when she went away? A. No, Sir; I don't remember when she went away.

Q. Did she not go away along in January, about the 15th? A. I don't recollect, Sir, when she went away. My bill will show, General, when she went away. The bill and papers I have got will show.

Q. Have you got anything which will show you when she left? A. I think it will show when she entered the seminary.

Q. Will it show when she left Brooklyn? A. I don't think I have got anything to show when she left Brooklyn.

Q. Do you remember if it was about February 7? A. No, Sir; I don't remember that.

Mr. Tracy—I offer the letters in evidence.

Judge Neilson—State to me why you think they are admissible. They are letters by a third person, Bessie Turner.

Mr. Tracy—We think they are admissible for this reason: This witness has already testified that the girl, Bessie Turner, was sent away because she had got information concerning Mr. Beecher and Mrs. Tilton, and that Mr. Beecher paid her board for that reason, because of that information. Now we propose to show that at the very time, or before she went away, this witness was in possession of the documents which show the reason why she went away, and that reason was because she reported strange words concerning Mr. Tilton and herself.

Judge Neilson—In other words, you offer a statement written by Bessie Turner, going to the question of why she went away, as evidence. I don't think it is.

Mr. Evarts—If your Honor please, this is the point: It has been made a subject of evidence here, as bearing upon the guilt of Mr. Beecher, that he cooperated with this witness and with Mr. Tilton in having Bessie Turner sent away from here, because she was in possession of, and would be in danger of, stating things prejudicial to Mr. Beecher in respect of his relations with Mrs. Tilton. Now, we prove, as a matter of fact, that she was sent away, as has already been stated, and as the only preliminary of sealing her mouth or correcting any prattle, as it is called, that she had been or might be induced to indulge in; that it was her written corrections, not of stories to the prejudice of Mrs. Tilton and Mr. Beecher, or either of them, but of stories to the prejudice of Mr. Tilton in respect to herself.

Judge Neilson—I must rule them out.

Mr. Evarts—If your Honor please, we desire to read the letters



in order that your Honor's ruling may be applied to the actual facts of this case.

Mr. Beach—We object to their reading them.

Judge Neilson—Avowing the fact; to illustrate it, I must apply the same ruling as I did the other day. He may read the letters.

Mr. Beach—We follow the principle of our learned friends in objecting.

Mr. Evarts—I offer those letters?

Judge Neilson—Yes.

Mr. Evarts [reading]:

JANUARY 12.

MY DEAR MRS. TILTON:

The story that Mr. Tilton once lifted me from my bed and carried me screaming to his own, and attempted to violate my person, is a wicked lie.

Yours truly, BESSIE TURNER.

That was the document that was taken from her before sending her away. I offer it in evidence.

Judge Neilson—I rule it out.

Mr. Beach—We withdraw our objection.

Judge Neilson—Mark it.

[Copy letter marked "Exhibit D 10."]

Mr. Evarts [reading]:

BROOKLYN, January 10, 1871.

MY DEAR MRS. TILTON: I want to tell you something. Your mother, Mrs. Morse, has repeatedly attempted to hire me, by offering me dresses and presents, to go to certain persons and tell them *stories* injurious to the character of your husband. I have been persuaded that the kind attentions shown me by Mr. Tilton for years were dishonorable demonstrations. I never at the time thought that Mr. Tilton's caresses were for such a purpose. I do not want to be made use of by Mrs. Morse, or any one else, to bring trouble on my two best friends, you and your husband. Bye-bye,

BESSIE TURNER.

Mr. Beach—We withdraw our objection to that.

[Copy letter marked "Exhibit D. 11."]

Judge Neilson—The audience will please remain seated until the jury pass out. [To the jury.] Gentlemen, please be in your seats at 2 o'clock.

Mr. Mallison (the Clerk)—This Court will now take a recess until 2 o'clock.

#### BESSIE TURNER'S SCHOOL BILLS.

The Court met at 2 p. m., pursuant to adjournment. Francis D. Moulton was recalled, and the cross-examination resumed.

Mr. Tracy—I call your attention to the writing on that envelope containing exhibits. [Handing witness an envelope.] Do you know that handwriting? A. Yes, Sir.

Q. In whose handwriting is it? A. I think it is Theodore Tilton's.

Mr. Tracy—I desire to put that envelope in evidence.

Judge Neilson—Yes, Sir.

[Marked "Exhibit D 12."]

Q. Do you know when it was you received the first money from Mr. Beecher, after receiving—the first money you received from Mr. Beecher? Do you know when it was? A. The first money that I received?

Q. Yes, Sir. A. I think it is in the statement which I have

handed to you, Sir. I think that was the first money that I received.

Q. Do you desire the account? A. Yes, I would like to see it, please [taking the account]. June 26.

Q. What year? A. 1871.

Q. What amount? A. \$155 85.

Q. Do you know how you received that? A. By check.

Q. Is the check presented to you the check by which that was paid? A. How is that, Sir?

Q. Is that the check received from Mr. Beecher for that amount? A. Yes, Sir; I think that is the check.

Q. How did you receive it? A. I suppose I received it inclosed in an envelope.

Q. Do you know anything about how Mr. Beecher came to send you that check? A. How he came to send it to me?

Q. Yes, Sir. A. Through information from me, I presume, Sir.

Q. Have you any recollection on the subject? A. I recollect that I informed him of the bill for Bessie Turner's schooling, Sir, and I got that check for it.

[Check marked "Exhibit D 13."]

Q. Have you got the bill? A. I think I have; yes, Sir.

Q. Let us have it, please.

The Witness—I think you have those papers, Judge Morris.

Mr. Morris—I will look for it.

Q. Was that the first bill that you have received or known of, for Bessie Turner's schooling? A. Yes, Sir.

Q. From whom was that bill received? A. I think from either Mrs. Tilton directly or the Principal of the school. Mrs. Tilton, I think, sent it to me.

Q. Who is the Principal of the school?

A. C. C. Beatty, I think, is the name. The bills will show, Sir, that are there.

Q. You don't know whether you wrote Mr. Beecher, informing him of that bill, or whether you saw him and told him of it? A. I communicated the fact to him, in some way, Sir.

Q. When did you get the next check? A. The next check seems to be November 15, Sir.

Q. Of what year? A. 1871.

Q. What amount is that? A. November 19, 1871, \$150.

Mr. Beach—What was the date of the first? A. The date of the first was June 26, 1871, \$155 85.

Mr. Tracy—On that day you received \$150 from Mr. Beecher? A. Yes, Sir.

Q. Do you know how you received it? A. By check.

Q. Do you know how you communicated the fact to Mr. Beecher that that amount was required? A. I don't remember, Sir, how. Mrs. Tilton, I think, sent me word that she wanted it for Bessie Turner.

Q. Is that the check that you received from Mr. Beecher for that amount? [Handing witness a check.] A. Yes, Sir.

[Marked, "Exhibit D 14."]

Q. When did you receive the next money from Mr. Beecher? A. According to this account, May 31.

Q. What year? A. 1872.

Q. For what amount? A. \$294 76.

Q. Have you got the bill of that? A. I have got the bill of



Elizabeth B. Tilton





Q. \$219 76 for that, and \$25 I paid to Mrs. Tilton upon her request—I think the note is among my papers—and \$50 I paid to Mrs. Tilton at her request, which makes \$294 76, which was a reimbursement for that amount.

Q. A reimbursement of money which you had previously paid for Mrs. Tilton? A. Yes, Sir, to the order of Rev. A. M. Reid. I got the bills from Mrs. Tilton, I think.

Q. You got those bills from Mrs. Tilton. [To plaintiff's counsel.] Will you give them to us, gentlemen?

Mr. Morris—We will take a memorandum of them and find them as soon as we can. What is it you want now?

Mr. Tracy—All the bills; the bills of Mrs. Tilton, and the bill for \$219.

A. Did you have a bill also for the \$150? A. I don't think there is any bill for \$150. I don't remember that there is. All the bills I have got, Mr. Tracy, on the subject, are there.

Q. And are you able to say that the \$150 in November, 1871, was applied by you to the payment of —, for Bessie Turner? I received from Mrs. Tilton a request for \$150 in August, and paid it.

Q. In August? A. In August, I paid her \$150, and did not get the check to reimburse me for it until November.

Q. Then you mean to say that the \$150 in November was to reimburse you for \$150 advanced to Mrs. Tilton in August? A. That I gave Mrs. Tilton, yes, Sir; my impression is that there is a bill for \$150 there; I won't be certain of it though.

Q. And have you any note or memorandum by which you requested the payment of that \$150 of Mr. Beecher? A. No, Sir.

Q. You don't know how you communicated that request to him? A. No, I do not; I don't recollect.

Q. Is the check now presented to you the check by which you received payment for the \$294 [handing witness a check]? A. I believe it to be; yes, Sir.

Q. What is the date of that, please? A. The date of this check is May 29, 1872; the date that it went on deposit with Woodruff & Robinson was May 31.

[Marked "Exhibit D 15."]

Q. Do you know when you received the next money from Mr. Beecher? A. According to this account, Sir, February 18, 1873.

Q. How much was that? A. \$500.

Q. What was it for? A. It appears here, Sir, that it was paid March the 7th, \$245, to Mr. Beatty, and April 5, Mrs. Tilton the balance of the \$500—\$255.

Q. Have you got the bills of those? A. I have got the bills of \$245, I think.

Q. No bill from Mrs. Tilton? A. For the \$255? No.

Q. Or any note requesting payment? A. No, I don't think I have.

Q. How did you make that payment to Mrs. Tilton? A. I think I made it to her directly.

Q. By check or in currency? A. I think in currency.

Q. Do you recollect? A. It does not state here, so that I don't recollect, Sir.

Q. Have you any recollection—as a matter of recollection have you any recollection on the subject? A. My recollection is that I paid it to Mrs. Tilton directly, in currency, Sir.

Q. Where? A. At her house, I think.

Q. Did you go to her house for that purpose? A. Think I did; yes, Sir.

Q. In pursuance of a note requesting you to call? A. I don't think I received any note, Sir.

Q. How was the fact communicated to you that she wanted money? A. I don't remember, Sir.

Q. Was it by Mr. Tilton? A. I think not, Sir.

Q. Why do you think not? A. Because he did not communicate any such things to me.

Q. Do you know that fact? A. I know that fact.

Q. Then will you tell us how you came to go to the house of Mrs. Tilton to pay that \$255? A. I should say by request of Mrs. Tilton.

Q. Have you any recollection on the subject? A. That is the only recollection I have, Sir. I don't know how I could have done it in any other way.

Q. You have no note? A. No, Sir; I don't think I have. If I have, it is in the—

Q. When did you pay the next money? A. The next money was paid—the next money was received, according to this account, \$5,000—

Q. The next? A. According to this account?

Q. That is another matter. We will not open that at present. Is the note now presented to you in your handwriting [handing witness a paper]? A. Yes Sir.

Q. Did you send it to Mr. Beecher? A. I judge I did, Sir, from this. [Handing the paper back to Mr. Tracy.]

Q. Did he send you— A. Will you let me see the note again. What is the date of it, Mr. Tracy, if you please?

Q. Oct. 21, 1872, I read it. I will hand it back to you, to make sure of that, Sir. A. [Taking the note]. Oct. 21, 1872.

Q. Did you receive the amount from Mr. Tracy therein requested? A. It appears so; yes, Sir.

Q. Allow me to read it. [Taking the note from the witness.] A. I do not see it down so on the account here, and I see a check May 31, 1872, \$294 76.

Mr. Tracy [reading]:

NEW-YORK, October 21, 1872.

DEAR SIR: Will you be kind enough to send me your check for \$294 76.

Very truly, yours,

FRANCIS D. MOULTON.

May 23, \$219.76, \$25, \$50.

October 21, \$274.71.

[Marked "Exhibit D., 16."]

The Witness—I do not see anything here, Sir, [referring to the account] to correspond with that.

Q. Do you know to what use you applied this money? A. I do not, Sir, except as it is here, \$219 76 to Mr. Reid, and \$25 and \$50 to Mrs. Tilton; that is the way it says on that paper.

Q. That was paid when? A. This was paid May 28th and Oct. 26th.

Mr. Tracy—[To Mr Morris]—Have you found the bills and accounts?

Mr. Morris—No, Sir; I am looking for them. I have found some of them.

Q. Had you any business transaction yourself with Mr. Beecher which would call for that amount of money? A. I don't recollect that I had Sir, any other.



Q. Can you explain in any way how you came to call on him for that amount of money in October, 1872? A. I can, Sir, from that account. That account is the only guide that I have, Sir. It is a mistake of the bookkeeper, or my own mistake, Sir, if it is a mistake. I don't know anything about it.

Q. Is the paper now handed you the first bill that you received for the expenses of Bessie Turner? [Handing witness a paper.] A. I believe it is; yes, Sir.

Q. And you paid it as above stated? A. Yes, Sir.

Q. How did you pay it? A. Paid it by check.

Q. Whose check? A. Woodruff & Robinson's—\$155 27. There is a note on the inside of this, Mr. Tracy, to Mrs. Tilton. Did you notice it?

Q. I did not. A. There is.

Mr. Fullerton—I ask that those papers be now put in evidence.

Mr. Tracy—I ask to put in the bill at present. We will see what the note is.

The Witness—The note is a part of it.

Mr. Tracy—That may be, but we offer the bill now, and the check by which it was paid. What is the date of that bill? A. It says June, 1871.

Q. What was the time of payment? A. July 19th.

Q. I will pass to the next that seems to be in the order of date. Can you tell whether that is the next bill you received? [Handing witness a paper.] A. No; here is another prior to that.

Mr. Fullerton—Do we understand that the letter accompanying the first bill is—

Mr. Tracy—I will see, Sir, in a moment.

Mr. Evarts—It is not yet in evidence.

Mr. Fullerton—You are bound to put it in evidence.

Mr. Evarts—I think not.

Mr. Tracy—That is a question for the Court.

The Witness—\$319 76, Mr. Tracy, seems to be the next one.

Q. What date is that? A. The date of the bill is January 24th, 1872.

Q. And how is that paid? A. Paid by check, Sir, Woodruff & Robinson's—paid by Woodruff & Robinson's check.

Q. Do you know how you got your pay for that? A. I presume from Mr. Beecher, Sir.

Q. Well, I mean by check, or how was the pay for that bill included in—what Exhibit is it? A. It was intended to be included in the bill for \$294 76, I think.

Q. Then it is included in Mr. Beecher's check, Exhibit No. — what, Mr. Moulton, please? A. This one.

Q. Yes; what is that number? A. "D. 15, F. M. A."

Q. Yes; that is it? A. Yes, Sir.

Q. Now what is the next bill? A. The one that I hold in my hand here, Sir, is June 27th, 1872.

Q. Was that the next bill that you received in order of time? A. I presume it was, Sir.

Q. What was the amount of that bill? A. \$118 12.

Q. And the next one? A. Where is the next one?

[Mr. Tracy passes a paper to the witness.]

The Witness—June, 1873; yes, Sir.

Q. Was that the next bill in order of time? A. I don't remember, Sir, whether it was the next; I think the account will show, won't it, Sir?

Q. I have passed you up now, I believe, all the bills that have been handed up?

Mr. Beach—I guess not.

The Witness—There was one that was sent, like this, and settled the balance for \$200, I think; this is \$245.

Q. What date is that bill? A. This bill is January, 1873.

Q. Was that the next bill that you received in order of time? A. That was the next bill, I suppose, Sir; all I know is by the date, Sir; this is January, 1873, the date of this.

Mr. Beach—You have got one there June, 1873?

The Witness—Yes, Sir.

Mr. Tracy—I will put them in in the order of time. [To the witness]: Do those constitute all the bills that you received for Bessie Turner's schooling? A. They are all that I am in possession of.

Q. Are they all that you know of? A. Yes, Sir; they are all that I know of.

Q. Are they all that you have paid, to your knowledge? A. The account shows all the bills that I paid, Sir; yes, Sir. All the bills that I paid are on that account, if the account is correct.

Q. Are those all the bills you have? A. These are all the bills I have, Sir.

Mr. Shearman [reading]:

#### Statement of Account.

#### STUEBENVILLE FEMALE SEMINARY.

Miss BESSIE TURNER, To A. M. REID, Dr.

Advanced Items.		For Boarding 9-10 S.	\$76 50
Books & Sta.	4 14	Tuition, Prin. Class.	10 80
Music	5 10	Washing	7 23
Phys. & Med.	6 00	Fire (2 mos.)	4 00
		36	4.50
Seat in Ch.	1 00	Music (doub. les.) use Piano.	40 50
	\$16 24		

"Adv. Item"..... 16 24

Am't.....\$155 27

June, 1871.

STUEBENVILLE, June 8th, 1871.

MRS. TILTON: I send you with this a statement of Miss Turner's bill for the past half-school year.

Bessie is doing very well in her studies, and is quite a favorite with us.

Sometimes she is not very well, but I think, on the whole, her health is improving.

Could you not come and make us a visit and bring Mr. Tilton with you? A little rest would do you both good. Very respectfully yours,

A. M. REID.

Bessie is making very good progress in music and in some of her common branches, as Arithmetic, Geography and Spelling.

No. 20996. NEW-YORK, July 19, 1871.

Metropolitan National Bank.—Pay to the order of Rev. C. C. Beatty, one hundred and fifty-five dollars and twenty-seven cents.

\$155 27.

WOODRUFF & ROBINSON.

Indorsed "Charles C. Beatty," "A. M. Reid" and the bank indorsements.

The above bill, accompanying letters and check each marked "Ex. D 17."

Steuenville Female Seminary.—Rev. C. C. Beatty, D. D., LL.D., Superintendent; Rev. A. M. Reid, Ph. D., Principal.  
Miss BESSIE TURNER, Dr.

Music.....	\$5 75	For boarding 7-10 session.....	\$59 50
Stores.....	5 85	Tuition, Middle Class.....	9 80
		Washing.....	5 70
		(35 ded. 5)	
Music.....	4 50	Music and use of piano, doub..	30 00
Stationery.....	77	Heated air.....	2 00

\$16 87 Advanced as per account on margin..... 16 87

Amount.....	\$123 87
Cr. Received in advance.....	
Balance due.....	\$123 87
Cr. Mistake in pieces of music.....	5 75

Am't due..... \$118 12

June 27, 1872.

Rec'd Payment, A. M. REID.

Steuenville Female Seminary, July 9, 1872.

Francis D. Moulton, Esq., 49 Remsen-st., Brooklyn.

DEAR SIR:—Yours containing draft \$118 12 for am't of Bessie Turner's bill is received. Please find bill receipted.

Bessie is a good and studious girl and is making good progress in her various studies. Very truly yours, A. M. REID.

Mechanics' National Bank,

33 Wall Street, New-York, July 8, 1872. }

Pay to Rev. A. M. Reid or order, One Hundred Eighteen 12-100 Dollars.

\$118 12. WOODRUFF & ROBINSON.

Indorsed—"A. M. Reid," and the Bank indorsements.

The above Bill, the accompanying letter and check, each marked "Ex. D. 18."

STEUENVILLE FEMALE SEMINARY. Rev. C. C. BEATTY, D.D., LL.D., Superintendent. Rev. A. M. REID, Ph. D., Principal.  
Miss BESSIE TURNER,

To A. M. REID.

Dr.		For boarding two quarters.....	\$85 00
Physicians.....	\$4 00	Tuition Pri. and Mid. classes...	12 00
Express.....	1 08	Washing.....	5 78
Cash, Store, &c. 16 00		Music and use of Piano extra.	47 00
Books and Sta.. 5 10		Heated air.....	2 00
Music.....	1 55	Boarding, vaca. 9 weeks @ \$4½	38 25
Seat in church... 1 50		Advanced as per account on margin.....	29 73
Reading R.....	50		
	\$29 73		

Amount..... \$219 76

Cr.

Received in advance..... \$219 16

Balance due..... \$219 16

Received payment,

January 24, 1874. A. M. REID.

No. 22311. NEW-YORK, May 23, 1872.

Metropolitan National Bank,

Pay to the order of Rev. A. M. Reid Two Hundred Nineteen 76-100 Dollars. WOODRUFF & ROBINSON.  
\$219 76.

Indorsed—"A. M. Reid," and the Bank indorsements.

The above bill and check each marked "Exhibit D, 19"

STEUENVILLE FEMALE SEMINARY. Rev. C. C. Beatty, D.D., LL.D., Superintendent. Rev. A. M. Reid, Ph. D., Principal.  
Miss BESSIE TURNER, Dr.

Adv. Items;		For boarding, two quarters...	\$87 50
Store account....	27 09	Tuition, primary class.....	12 00
Books and sta'ry.	5 50	Washing.....	4 50
Pieces music.....	3 40	Music and use of piano (5 l. a w.).....	62 50
Seat in church....	1 50	Heated air.....	3 50
Reading-room....	50	German.....	10 00
Cash.....	5 00	Vacation, five weeks.....	20 00
	\$42 99	Trip to Frankfort Springs...	7 87
		Advanced as per account on margin.....	42 99

Amount..... \$250 86

Deduct for loss..... 5 86

Balance due..... \$245 00

Received payment in full, by check, March 6, 1873,

CHARLES C. BEATTY,

Per A. M. REID.

Jan. '73.

Session ends Feb. 3d.

No. 23386.

NEW-YORK, March 6, 1873.

Metropolitan National Bank.

Pay to the order of Rev. C. C. Beatty, Two Hundred and Forty-five Dollars. WOODRUFF & ROBINSON.  
\$245.

Indorsed—"Charles C. Beatty," and the Bank indorsements.

The above bill and check each marked "Ex. D 20."

Miss BESSIE TURNER,

		To A. M. REID, Dr.	
Advanced.		For Boarding, one session....	\$87 50
For pew rent....	\$1 50	Tuition, mid. cl.....	14 00
Reading R.....	0 50	Washing.....	4 70
Music.....	4 75	German, one session.....	10 00
Store.....	52 08	Heated air.....	2 50
Sewing.....	5 40	Room alone.....	5 00
Physician.....	0 90	Music M. P. (2½ l.).....	62 50

Books and stat'y..... \$65 13  
4 75 Advanced items..... 69 88

\$69 88 Amount..... \$256 08  
Cr. by deduction one quarter school bill (\$186.20)..... 46 55

June, 1873,

Balance due..... \$209 53

NEW-YORK, December 16, 1873.

Mechanics National Bank.

Pay to the order of A. M. Reid, Two hundred dollars.

(\$200.) WOODRUFF & ROBINSON.

Indorsed—"A. M. Reid," and the Bank indorsements.

The above bill and check each marked "Ex. D. 21."

STEUENVILLE FEMALE SEMINARY, Dec. 6, 1873.

MRS. E. R. TILTON:

Dear Friend: If you could send me the balance due on Bessie Turner's bill for last year before the first of January, it would confer a great favor. A number of large bills will be due at that time which must be met. The balance of the bill was \$209 53. Call the balance \$200.

The Bill was..... \$256 08  
Deduct ¼ School bill..... 46 55

Amount..... \$209 53

If you can send me the amount due, it will be a great favor at the present time.

Bessie is now visiting friends in Pittsburgh.

I have tried to get her a place.

I doubt whether she is willing to do such things as she is fitted to do. I do hope she will get along well, and yet I feel anxious about her. I asked her to come back to school awhile if she could not get any other place. With great consideration,  
Yours, A. M. REID.

[Marked "Ex. D 22."]

STEUENVILLE SEMINARY, Dec. 18—'73.

F. D. MOULTON, Esq.:

Dear Sir: Yours, containing check for \$200 in full for school bill is rec'd. This pays all her indebtedness to this date.

Very truly yours, A. M. REID.

[Marked "Ex. D 23."]

Mr. Tracy—That terminated the transaction of Bessie Turner's school bills, didn't it? A. I believe it did.

Q. After that you had nothing more to do with her? A. Not after she got through with her schooling.

Mr. Shearman—[Reading.]

TUESDAY, January 13th, 1872.

DEAR FRANCIS: Be kind enough to send me \$50 for Bessie. I want to inclose it in to-morrow's mail.

Yours gratefully,

ELIZABETH.

The Witness—What date is that?

Mr. Shearman—January 13th, 1872.

[Marked "Exhibit D, No. 24."]

Mr. Evarts—We ask for any notes that covered these pay-



ments that Mr. Moulton mentioned as having been made to Mrs. Tilton. This last note has been read as one of them. It is the only one which has been handed to us as far as I know.

Mr. Morris—I have handed all that I have found yet.

The Witness—I handed to Judge Morris all that I had, Sir. I don't know whether there are any more or not. If there are, I will try and find them.

Mr. Morris—There is the letter you called for.

Mr. Tracy—Now, you have spoken of three letters, all dated 7th of February, 1871; two by Mr. Beecher, one by Mr. Tilton? A. Two by what, Sir?

Q. Two by Mr. Beecher and one by Mr. Tilton, 7th February, 1871, the three letters? A. That is the letter from Mr. Beecher to me?

Q. Yes, Sir? A. And the letter from Mr. Tilton to me?

Q. Yes, Sir? A. And the letter from Mr. Beecher to Mrs. Tilton?

Q. Those I infer were all written by prearrangement, were they not? A. I don't know of any prearrangement particularly about it.

Mr. Evarts—They are all in evidence.

Mr. Tracy—They are all dated the same day, are they not? A. They are all dated the same day.

Q. Well, they were written in pursuance of a conversation that preceded their writing, were they not? A. I suppose they were written in consequence of conversation that preceded their writing.

Q. And their object was the reconciliation of the parties, the more perfect reconciliation of the parties, was it not? A. Yes, Sir.

Q. Now, after those—the date of those letters, the relations of the parties were friendly, were they not? A. After Feb. 7th?

Q. Yes, Sir. A. Yes, Sir; they were friendly for some time.

Q. For some time? A. Yes, Sir.

#### STORY OF TILTON'S NEWSPAPER REHEARSED.

Q. Soon after that *The Golden Age* was founded, was it not? A. I believe, Sir, in March. March 2d, 1872—1871. March 2d, 1871.

Q. And it had been determined on for some time before—before the first number was issued? A. Yes, Sir.

Q. Now, how long after the separation of Tilton from Bowen was the starting of *The Golden Age* determined on or discussed? A. Well, Sir, I think in the beginning of January—I should think it was January it was talked about.

Q. It began to be talked about in January? A. Either in January or February, Sir; I don't remember which.

Q. And arrangements were set on foot and prosecuted, until it was started and the first number issued? A. Yes, Sir.

Q. Now, will you explain in detail just how that paper was started, and what was its financial basis? A. Financial basis of *The Golden Age*?

Q. Yes, Sir. A. The paper was started from a conversation between Mr. Woodruff and Mr. Tilton.

Q. I don't care to go into the details of that conversation. I want you to go on and show how the money was raised for it,

and who owned it. A. Well, Mr. Woodruff arranged for the money for it, Sir. Mr. Woodruff and Mr. Tilton coöperated in regard to that.

Q. Well, what was done? I don't care what was said, but what was done? A. Certain subscriptions were made—certain subscriptions were made by different parties for the paper.

Q. Well, who were the subscribers for the paper—I mean subscribers to this fund? A. Theodore Tilton embarked in it all the means that he had—\$4,000, I think—at that time.

Q. How much? A. \$4,000, I think he had at that time—\$4,000 or \$5,000.

Q. Was that money that was deposited with your firm? A. Yes, Sir.

Q. Then who else subscribed? A. Mr. Mason, I think, Mr. Woodruff—

Q. How much did Mr. Mason subscribe? A. I really don't remember, Sir. I think it was \$3,000; \$1,500 or \$3,000.

Q. What Mason? A. John W. Mason.

Q. What is his business? A. With the firm of Samuel Thompson's Nephew.

Q. Who else subscribed? A. Jackson S. Schultz, and a Mr. Southwick.

Q. How much did they respectively subscribe? A. Well, I forget really how much. I don't know at the time—I think it was \$1,500 apiece, or \$750 apiece.

Q. One or the other. This Mr. Southwick is Mr. Schultz's partner? A. Yes, sir.

Q. Who else subscribed? A. Mr. Woodruff.

Q. How much did he subscribe? A. Mr. Robinson—Mr. Woodruff subscribed \$3,000, if I remember rightly, and I subscribed \$3,000, and Mr. Robinson subscribed a thousand.

Q. Well? A. I believe those were all, all that I recollect at present.

Q. Can you state here the aggregate of those subscriptions if you can? A. I have not got it with me—

Q. Now, what were the terms of those subscriptions; it was not a stock enterprise was it? A. It was not an incorporation as I understood it; no, it was not an incorporation.

Q. What were the terms of that subscription? A. The terms of the subscription were, that the subscription should be paid and Mr. Tilton should give his notes, I believe, for the amount.

Q. Payable to these subscribers? A. Payable to those subscribers.

Q. Payable when and out of what fund? A. Payable out of—payable by Theodore Tilton.

Q. Well, absolutely? A. I cannot give you the facts about that, Mr. Tracy, because I don't know them exactly enough to give them, but Mr. Woodruff can give them for you. If I knew all about it, Sir, I would.

Q. Did Mr. Tilton give his notes for the subscriptions? A. Mr. Tilton drew the money in proportion.

Q. Did he give the subscribers his notes? A. Yes, Sir, he gave—I believe he did.

Q. And then took from them their subscriptions as they were paid in? Now, how were those subscriptions to be paid in? A. Paid in when they were wanted—paid in when they were wanted by Theodore Tilton.

Q. By yourself as one—yes, Sir. Now, after the 2d of March, Tilton was engaged, I suppose, continuously on *The Golden Age*, wasn't he, for some considerable period of time?  
A. I think he was; yes, Sir.

Q. Giving all his time and thought to that paper? A. Yes, I suppose so.

Q. And did you meet Mr. Beecher frequently after that? A. I met Mr. Beecher during 1871, after the establishment of *The Golden Age*.

Q. Frequently, did you not? A. Yes, Sir, frequently.

Q. And did you see Mr. Beecher and Tilton together frequently? A. Not very frequently; no, Sir.

Q. Well, did you occasionally? A. Once in awhile.

Q. Where, and under what circumstances? A. I think they generally met at my house, Sir.

Q. How often did they meet at your house, should you say?  
A. Not very often, Sir.

Q. What was your habit about going to Mr. Beecher's house?  
Mr. Beach—At that time?

Mr. Tracy—Yes, Sir.

The Witness—Going to whose house?

Q. Mr. Beecher's? A. I didn't go there very frequently.

Q. In 1871? A. No, Sir.

Q. How often was Mr. Beecher at your house? A. Well, he was there quite frequently, Sir.

Q. Did he see your family? A. He saw my wife sometimes.

Q. Well, frequently dine with you or take a meal with you?  
A. No, Sir, not very.

Q. Not very? A. No, Sir.

Q. But sometimes? A. I don't remember that he ever took any; I don't think that he took meals with us over three or four times.

Q. Well, was Tilton present on those occasions? A. I remember one occasion when Tilton was present.

Q. Not more than one? A. Not at the table; no, Sir.

Q. Was it at dinner? A. It was at dinner, yes, Sir.

Q. Did you have other company present? A. Yes, Sir.

Q. Did you ever see Mr. Beecher at Tilton's house after that?

Mr. Beach—After what?

Mr. Tracy—After the starting of *The Golden Age*; that is the period of which I am now inquiring? A. Yes, Sir; I was at Tilton's house with Mr. Beecher and Mrs. Woodhull after that.

Q. Yes; when was that? A. It was in 1871, I think.

Q. What time? A. I don't remember what time it was in 1871.

Q. Well, about what time? A. It was before the publication, I think, of the Woodhull biography.

Q. Before that? A. Yes, Sir.

Q. What time of day did you see them there? A. My recollection is that it was in the afternoon.

Q. How long did they stay there? A. I guess, perhaps, they were there half an hour or an hour.

Q. Tilton present? A. I believe he was.

Q. Well, is that the only occasion you ever saw Mr. Beecher at Tilton's house, after the starting of *The Golden Age*?

A. Yes, Sir. I think it is the only occasion. I think that was the only occasion, Sir.

Q. Where else have you seen them together? A. I have seen them together at my house in—

Q. In 1871, I mean? A. In the year 1871?

Q. Yes, Sir; I will confine it prior to the writing and publishing of the life, the biography, of Mrs. Woodhull, in 1871; before that publication did you see them together at your house?

Mr. Morris—When was that publication?

Mr. Tracy—The witness will tell us.

Q. When was it? [To the witness.] A. My impression is, Sir, it was in the latter part of 1871.

Q. Wasn't it in September, 1870? A. Not 1870—1871 you mean.

Q. In 1871? A. I don't remember whether it was in September or not. I think it was though.

Q. September? A. I think it was.

Q. Wasn't it issued on the 14th of September? A. I don't recollect.

Q. Well, it was about that time, anyway? A. It was about that time, I should think.

Q. Now, between the starting of *The Golden Age* and that period, how often should you say you had seen Mr. Beecher and Mr. Tilton at your house together? A. Oh, not often, Sir; I don't think over three or four times.

Q. Had you seen them elsewhere together besides at your house and Tilton's house? A. I think on February 27th—somewhere around that—I went over with Mr. Beecher to New York, to Mr. Bonner's office, on some business, and Mr. Beecher then went to *The Golden Age* office, and my impression is that I went from Mr. Bonner's to *The Golden Age* office, and found Mr. Tilton there, Mr. Beecher there.

Q. With Tilton? A. For a moment; just for a moment, yes, Sir.

Q. With Tilton? A. Yes, sir, I think he was there for a moment with him.

Q. Did you ever see him at *The Golden Age* office on any other occasion? A. No, not that I remember.

Q. Did you ever see them walking together in the street on any occasion? A. No.

Q. What is the answer? A. No, Sir.

Q. Do you remember of being in company with Mr. Tilton and Mr. Beecher at a yacht race—regatta? A. Yes, Sir; I don't think that was in 1871. I think there is a letter, Sir, among the papers that will fix the date.

Q. Well, when was it? Now that I am on that transaction I will fix the date of it. When was it? A. Well, I really don't remember, Sir; it was not in 1871.

Q. Well, was it after 1871? A. I think so. I can fix the date precisely, Sir, by the paper.

Q. If you can, we would rather have it fixed now. A. I cannot fix it from my memory.

Q. No; if you have got any paper in your possession that will enable you to fix the date of it, fix it right here. A. I think I remember reading, among those papers, a letter from Mr. Beecher accepting an invitation to go with Horace Greeley; it was during Horace Greeley's life.



Mr. Evarts—Have you got a letter from Mr. Beecher accepting an invitation to go on this yacht race?

Mr. Morris—I don't remember ever seeing that letter.

Mr. Evarts—Mr. Moulton says it is among your papers.

Mr. Morris—I think not; I will look.

Q. Well, what was the regatta—that was Ashbury's yacht race, wasn't it; the English regatta? A. I think it was; I think it was between the Sappho and the Livonia.

Mr. Evarts—The English yacht? A. Yes, I believe so.

Q. Now, can't you fix the year of that?

Mr. Morris—We have found the letter. [Letter handed to witness.]

Mr. Evarts—That is to you, Mr. Moulton?

Mr. Beach—I do not perceive the materiality of that letter,

Mr. Tracy—Only to fix the date? A. Yes, October 20th, '71, this seems to be dated, Sir.

Mr. Evarts—That is the paper? A. I think this is it.

Q. That is the paper you referred to that fixes the date? A. I think this is the one, Sir; that is the one I referred to.

Q. Well, that refreshes your recollection as to the time? A. Yes, Sir.

Q. Of the yacht race? A. Yes, Sir; I think that was the yacht race referred to.

Q. And that date is Oct. 20th, 1871? A. That was either the—Mr. Tilton was along, I believe, that day; we either went to a yacht race, or went down to look at the warehouses along the shore; I think it was a yacht race.

Mr. Tracy—Now, who went? Were you three on that yacht race? A. I believe we were; yes, Sir.

Q. And companions together on that day? A. Well, I believe that Mr. Tilton talked. I think Oliver Johnson was along that day, if it is the day that I remember, and Mr. Tilton talked with Oliver Johnson chiefly that day, and Mr. Beecher and myself were together a good deal.

Q. Well, were not you all four together? A. I don't recollect whether we were all four together or not; I guess very likely we were.

Q. Do you know how you went to the yacht? A. How we went to the yacht?

Mr. Tracy—Yes. A. Went on a steam-tug.

Q. How did you go to the steam-tug? Go in a carriage together? A. No; I think not; I think we went separately; I went for some of the guests; I believe I stopped for Horace Greeley, and did not find him that day. On the whole I guess Mr. Greeley was not along, after all.

Q. Who invited Mr. Beecher and Mr. Tilton to go on that race? A. I did.

Q. You invited them both? A. Yes, Sir.

Q. And did you invite Mr. Greeley also? A. Yes, Sir.

Q. Did Mr. Greeley go? A. My impression is, Sir, that I missed him by a minute, and he did not go.

Q. And he did not go? A. Yes, Sir.

Q. Was not long? A. I believe not.

Q. How long were you on that regatta? A. May be three or four hours.

Q. Did you dine on board the yacht? A. On board the yacht? No, Sir.

Q. On board the steamer? A. I don't know; I don't remember whether we had any refreshments on board or not, Sir; I think not.

Q. Well, now, I call your attention to another occasion when you went down on some vessel viewing the warehouses; do you remember that? A. I may confound the two, Sir; I do not know:

Q. How? A. I may confound the two; I think it was on the same occasion; there may have been two occasions, and there may have been only one.

Q. If there were two occasions, were Beecher and Tilton together on the two occasions? A. I do not recollect, really, Sir, whether they were or not.

Q. Were they together on the warehouse occasion? A. I really do not recollect; they were together on one occasion that I remember; that is all that I can recollect about.

Q. That is all you remember about? A. Yes, Sir.

Q. Well, *The Golden Age* started prosperously, didn't it?

Judge Neilson—State your impression, as far as you could judge? A. My impression is that it was prosperous. I have a letter from Moses Coit Tyler that I found among my papers—

Q. Well, we are asking you now—

Judge Neilson—He answered that he thought it started prosperously.

The Witness—I am giving my authority for the thought.

Mr. Tracy—Well, we will be contented with your thought.

The Witness—Thank you, Sir.

Q. Well, I will recur to that letter. Now, can you say, on reading that, whether it was the warehouse or the yacht race that it refers to? A. Well, I really cannot— My impression is that it was the yacht race.

Q. It was one or the other, or else both were included at the same time? A. It was one or the other; at all events, there was one occasion, I believe, when Mr. Tilton and Mr. Beecher were together on a—

Q. Do you remember that on coming from the warehouse excursion Mr. Beecher and Mr. Tilton went to your house and dined together? A. I do not recollect that.

Q. Don't recollect whether they did or not? A. No; haven't any recollection about it.

Q. You have no recollection as to how you returned from that excursion—you don't remember whether they did or not? A. I remember that, after the yacht race—I recollect that, after the yacht race, Mr. Beecher and myself were at our house together. Q. Beecher and yourself? A. Yes, Sir.

Q. Wasn't Tilton along? A. I don't recollect.

Q. Don't recollect whether he was or not? A. I do not; no, Sir.

Q. Now, the publication of the life of Victoria Woodhull by Theodore Tilton was in September, '70? A. No; I did not say that.

Q. '71—Was that published in *The Golden Age*? A. In *The Golden Age*? I think not, Sir.

Q. Wasn't it published in the supplement to *The Golden Age*? A. No, Sir.

Q. And then put into a tract—one of *The Golden Age* tracts?  
 A. I don't think it was ever published in *The Golden Age*, Sir.  
 Q. Have you got a copy of that life? A. I do not think I have.  
 Mr. Evarts—[to plaintiff's counsel]—We gave you notice to produce it, if you had any such copy.

Mr. Morris—It does not appear that the plaintiff has it.  
 Mr. Evarts—We would like to have it, if you have got it.  
 Mr. Morris—We have not got it.  
 Mr. Evarts—We gave them notice to produce the composition of that life, and they say that they have not got it, so we may have to have a copy of it.

Judge Neilson—The manuscript, I suppose, passed to the printer; it is not often reclaimed.

Mr. Evarts—Very likely; of course.  
 Mr. Tracy—How large a pamphlet was that? A. A small pamphlet, as I recollect; but I did not read it all.

Q. You read the most of it? A. No, I don't think I did.  
 Judge Neilson—He answered the other day, I think,  
 Mr. Tracy—No, not the "Life;" that was another composition.

The Witness—Is there anything to be done with this letter that I hold?

Mr. Tracy—No; I think not. Now, was it after the publication of the "Life of Victoria Woodhull" that this change, that you have already spoken of in your evidence, was made in the subscription to *The Golden Age*? A. I think it was after the publication of the "Life of Victoria Woodhull."

Q. How long after? A. I don't exactly recollect, Sir.  
 Q. Well, can't you approximate to it? A. No, I cannot; I shall be able to, I think, before I finish my evidence; I had a letter that fixed the date for which I have made a search and have not found.

Q. Now state in detail what that change was that occurred in *The Golden Age* after the publication of that Life? A. Mr. Woodruff thought best that Mr.—

Q. Just state what was done; I don't care what you thought, or—

Judge Neilson—So far as you know what was done. You told us the other day as to your own. A. When it came to payment of the subscription—of the last half of the subscription. Mr. Woodruff thought it better that Mr. Woodruff—that Mr. Tilton should have *The Golden Age* as his own property—become sole proprietor of it; and so the notes were surrendered to Mr. Tilton. When that was, Sir, I don't remember.

Q. And what was received by the subscribers for the half of the subscription already paid in? A. Their notes, I believe—What was received, what?

Q. What did the subscribers receive from Mr. Tilton for the half of the subscription which they had already paid in? A. Nothing that I know of.

Q. They gave that to him? A. Yes, Sir.  
 Q. In other words, they gave him what they had already paid in, in consideration of his releasing them from the other half of their subscriptions; that was it, was it not? A. He did release them from the other half of their subscriptions.

Q. Well, the one was the consideration for the other, wasn't it? A. I suppose it was.

Q. And that was done by all the subscribers, including yourself? A. Yes, Sir.

Q. Now, are you not able to approximate to the time when that occurred? A. I really am not, Mr. Tracy; I hope to fix it for you before my testimony is concluded.

Q. About how soon after the publication was it? A. I really don't remember, Sir; if I recollected anything about it I would state it freely.

Q. Can you tell whether it was before or after the Steinway Hall meeting? A. I don't recollect that.

Q. You say you got a letter that will enable you to fix that date? A. I have had such a letter; yes, Sir.

Mr. Tracy—We will thank you to refresh your memory.  
 The Witness—Or I have been informed of such a letter—I have seen such a letter.

Mr. Shearman—We have subpoenaed the plaintiff in this case (*duces tecum*), to produce the original manuscript of the Life of Mrs. Woodhull, and also a printed copy. We have also given him notice to produce—

Judge Neilson—I don't think you can compel him to bring a printed copy. You can buy that, perhaps, at the store. [Laughter.]

Mr. Tracy—Unfortunately, we cannot, your Honor.  
 Mr. Evarts—It is not a question arising as to whether we can or cannot, at present. We have taken the proper steps to have him do it, and the question is whether he brings it or not.

Mr. Fullerton—He cannot—  
 Mr. Evarts—Not the printed copy.  
 Mr. Fullerton—We haven't got any copy.  
 Mr. Evarts—Then we shall have to refer to other evidence.  
 Mr. Tracy—Well, you remember that such a Life was issued as one of *The Golden Age* tracts, do you not?

Mr. Morris—He has not said so.  
 Judge Neilson—He has said he does not remember that it was.

Mr. Tracy—That it was.  
 Mr. Pryor—That it was not.  
 Judge Neilson—Well, what did you say? A. He asked me if it was—

Mr. Beach—Well, I don't see the materiality of that inquiry.  
 Mr. Tracy—Was, or was not the Life of Victoria Woodhull, written by Theodore Tilton, issued as one of *The Golden Age* tracts?

Mr. Beach—I object to that question.  
 Judge Neilson—I think he has answered. Let him answer. Do you know whether it was or not? A. It was issued in a tract, Sir. I don't recollect whether it was one of *The Golden Tracts* or not.

Q. There was a series called "*Golden Age Tracts*," was there not? A. I don't know that there was a series. There were some *Golden Age* tracts.

Q. Numbered "Tract 1," "2," "3," and so on? A. I don't recollect that.

Q. Don't recollect that? A. No, Sir.  
 Q. Well, that was a *Golden Age* tract, wasn't it; and issued from *The Golden Age* office. A. I don't know that it was.  
 Q. The Life of Victoria Woodhull?



Mr. Fullerton—He has said that.

Judge Neilson—He has said that he knows that it was issued in *The Golden Age* office; he does not know that it was one of *The Golden Age* tracts.

Mr. Tracy—Now, wasn't the fact of the issuing of that tract—the publication of the Life of Victoria Woodhull—very injurious to *The Golden Age*?

[Objected to.]

Judge Neilson—Ruled out, Sir.

Q. Wasn't it the occasion of this transaction by which the subscribers asked, or were relieved from their subscription, in consideration of their surrendering the notes.

Mr. Fullerton—That is objected to.

Judge Neilson—I think he can answer that, so far as he himself is concerned, but not as to the others.

Mr. Morris—That is not the question.

Judge Neilson—How was it as to you personally?

Mr. Beach—Well, that is immaterial. How is it material?

Judge Neilson—I don't know. I only assume that it is possibly material in some view.

Mr. Beach—Well, when the question is objected to, your Honor should see the materiality of it.

Judge Neilson—I don't see the materiality of it.

Mr. Beach—Or see the mode in which it can be connected with the trial as material. What the publication of the Life of Victoria Woodhull has to do with the inquiry now before your Honor, we are not able to perceive.

Mr. Tracy—I will ask you one other question.

Mr. Evarts—The Judge says he may answer this question.

Judge Neilson—I rule that he may answer as far as he is personally concerned, assuming that he cannot answer as to the motives of the other persons. I take an exception to that.

Mr. Evarts—Well, let us have your answer? A. It did not have any effect upon me, Sir.

Mr. Tracy—That was not the occasion of it, then, so far as you were concerned? A. No, Sir.

Judge Neilson—You lose time by repeating; that don't help it.

Mr. Tracy—His answer was that it did not have any effect upon him.

Judge Neilson—Well, that is conclusive; that ends the inquiry; go on.

Mr. Tracy—I ask another question. What was the cause of your retiring or surrendering your subscription and giving back the note?

Mr. Fullerton—I object to it.

Mr. Evarts—Why?

Mr. Fullerton—Why, because it is not of importance.

Judge Neilson—I think he may answer it.

Mr. Fullerton—It does seem to me there ought to be some appearance—

Judge Neilson—I think there ought to be some limit, but still I think he may answer that.

Mr. Fullerton—Would your Honor ask the counsel to point out some application that can be made of that testimony to his case, if they know: if they don't know, why that will ex-

cuse them. It certainly seems to me as irrelevant as anything can possibly be.

Judge Neilson—Mr. Tracy, in view of the objection, state how you deem it material, please?

Mr. Tracy—I deem it material to show, first, the relations of this witness to the plaintiff; to show his knowledge of the disaster that came upon the plaintiff at this time, and to show the materiality of this fact in regard to another piece of evidence which the plaintiff has introduced here preliminary to a question which I am about to ask the witness.

Judge Neilson—Well, pass to that question, perhaps that will enlighten us.

Mr. Evarts—Does your Honor rule out the question?

Judge Neilson—At present, as immaterial.

Mr. Evarts—Then, your Honor, we except to the ruling.

Mr. Tracy—Do you remember the publication of Mr. Tilton, called "Sir Marmaduke's Musings?" A. Yes, Sir.

Q. When was that published—the poem? A. I forget the date, just at the moment.

Q. Can't you fix about the time? A. It is in evidence, the paper, Sir; I don't remember the date; there are too many dates.

Mr. Evarts—Perhaps the date has been given in evidence already.

The Witness—Yes, the date is there.

Judge Neilson—The paper—but the most difficult thing, of course, for the witness to remember, is dates.

Mr. Tracy—It is November 1st, I believe.

Judge Neilson—It is in the book, isn't it?

Mr. Tracy—November 1st, 1871.

Mr. Tracy—Now, was it published about that time, according to your recollection? A. I don't remember the date; I saw it about the time it was published, whatever that date was.

Q. Well, do you recollect now that it was in the Fall of 1871, about November? A. I don't recollect that, Sir; but I assume that to be the date.

#### MORE ABOUT THE WOODHULL BIOGRAPHY.

Q. Well, was it after the publication of the Life of Victoria Woodhull? A. I don't recollect that.

Q. Was it after this settlement that was made in regard to the subscriptions for *The Golden Age*? A. I don't recollect that.

Q. Now, Mr. Moulton, don't you know the fact from Mr. Tilton that the publication of the Life of Victoria Woodhull was disastrous to him and his enterprise—his newspaper enterprise? A. Will you repeat the question?

Q. Don't you know from Mr. Tilton that the publication of the Life of Victoria Woodhull, in September, 1871, was disastrous to him and his newspaper enterprise? A. He has never told me that.

Q. He has never told you that? A. No, Sir.

Q. Has he ever talked with you on the subject of the effect that the publication of that Life had upon the prosperity of *The Golden Age*? A. I talked with him about it; he didn't with me at the time.

Q. You talked with him but he did not with you? A. Yes, Sir.

Q. Tell us what you talked to him? A. I told him that I thought he ought not to have published it.

Q. Well, why? A. Well, I told him that it seemed—so many statements in it seemed extravagant to me—many statements in it seemed extravagant; I did not think it was a necessary work to do; and his reply to that—his reply to that—when I said that he didn't talk to me, I mean that he didn't open the subject; I opened the subject of the conversation; his reply to me was, that he did it as a friendly act to Mrs. Woodbridge from the manuscripts furnished him by her husband; that was simply a revision by him, but that—

Mr. Tracy—Well, now, Mr. Moulton—

Mr. Beach (to Mr. Tracy)—Wait! wait! wait!

Judge Neilson—Let him state the conversation, please.

Mr. Tracy—I did not ask him for the conversation.

Judge Neilson—Go on, Sir.

Mr. Evarts—Let us get it.

The Witness—That it was simply a revision of the manuscript of—of her husband, and that he thought that people would detect his handiwork in it, and therefore he thought he would put his name to it, and I told him that I didn't think that that was a very good reason. He said he would take the responsibility of it, and that was the sum and substance of it, with the exception—and he said it was a friendly act; he said it was a friendly act, and right, in the interest of the repression of the scandal against Mr. Beecher, his wife, and himself; it was in the interest of his family and Mr. Beecher that he had done it, and if he had made a mistake, why that was all there was of it.

Q. Anything more? A. No; I don't remember anything more.

Q. Well now, do you recollect that he ever talked to you about it? A. I have just given—

Q. Do you now? A. I have just given the conversation.

Q. You now do recollect that he talked with you on the subject of that life? A. Yes, Sir.

Q. Now, did he talk to you about the effect that it had on him and the effect that it had on his newspaper? A. No.

Q. He did not? A. No.

Q. Did you talk to him on that subject? A. I told him that I thought the effect of it would be disastrous upon the paper.

Q. What did he say to that? A. I don't recollect his reply to that.

Q. Did he make any at all? A. He may have made it, but I do not recollect it, Sir.

Q. Do you know, as a matter of fact, what the effect was upon the paper?

Mr. Beach—No, as a matter of fact?

Mr. Tracy—Yes, sir; that is the question. Do you know, as a matter of fact, what the effect of that publication was upon the paper?

Mr. Beach—I understand this question, if your Honor please, not as calling for a judgment or opinion of the witness, but that he is asked personal knowledge of a fact of that character.

Mr. Evarts—It is not necessary to explain; we would like to have an answer.

Mr. Beach—It is; yes, Sir. I want the witness to under-

stand what it calls for. I am regular and I am in order; and I am not to be subdued by this objection. I submit that it is the duty of the Court to instruct a witness when requested by counsel that the interrogatory put calls for his personal knowledge of the fact as to the effect produced by that publication on *The Golden Age*.

Judge Neilson—I think that is so.

Mr. Evarts—I submit, if your Honor please, it is time enough to appeal to the Court to take a witness from the hands of the cross-examining counsel to explain to him when the witness feels the need of explanation, and not when the counsel does. [Laughter.]

Mr. Beach—It is not when the counsel feels or the witness feels. If the question was intended, or is understood, as calling for the opinion or judgment of the witness, then, of course, we shall object to it, and it is only for the purpose of having the question understood by your Honor and the witness that the suggestion is made.

Mr. Evarts—Now we would like to have an answer.

[Question read by THE TRIBUNE stenographer.] The Witness—Of what? That was not all the question, was it?

Mr. Tracy—It seems so. That is what he has read to you.

Judge Neilson—It is a peculiar question and requires some consideration.

The Witness—Will you read the question again, Mr. Stenographer?

[Question again read.]

The Witness—Of what?

Mr. Tracy—Of the publication? A. Of the publication? I don't know, as a matter of fact.

Q. What it was? A. No.

Q. You were a subscriber at the time? A. I took the paper at the time.

Q. I mean a subscriber to the fund at that time? A. Subscriber to the fund? Yes, Sir.

Q. Interested in that enterprise? A. Yes, Sir.

Q. By your subscription? A. Yes, Sir.

Q. And how long did you remain so interested after that publication? A. I don't recollect, Sir.

Judge Neilson—We have had that; we have been over that.

Mr. Tracy—I beg your Honor's pardon, we have not had the time.

Mr. Beach—He told you repeatedly that he could not tell you the time.

Q. Did you remain a week after that? A. I don't recollect, Sir, how long I remained.

Q. Will you swear that you remained a week after that publication? A. I cannot fix the date at all; I cannot recollect anything about it.

Q. Did you go out at the same time the other people did? A. I did.

Q. Now, what was the occasion of your going out? A. To give to Mr. Tilton, in accordance with Mr. Woodruff's view of the case, the sole proprietorship of the paper. As far as I am concerned, that was the reason.

Q. And upon what was that resolution taken to give to Mr.



Tilton the amount of subscription already paid into that paper?  
A. Will you ask the question again?

Q. Upon what was that resolution to give to Mr. Tilton the amount of subscriptions already paid in in that paper taken?

Mr. Morris—He has answered that question two or three times.

Mr. Tracy—The question has not been put before. He may have answered it.

Mr. Morris—Yes, he has. He said it was the suggestion—

Mr. Evarts—Now, we don't want that.

Judge Neilson—Will the audience please be quiet one moment. Excuse me, Mr. Evarts, I understand this perfectly. I don't need any instructions about it.

Mr. Evarts—If your Honor please—

Judge Neilson—You generally rise for the purpose of instructing the Court. I don't happen just now to need that.

Mr. Evarts—I don't rise for that purpose now, and I don't know that I ever did, except to call the Court's attention to what I supposed—

Judge Neilson—I have had the pleasure to so understand it when you did arise before; I think the answer to this question may be given, although it has been answered already.

[Question read by THE TRIBUNE stenographer.]

The Witness—Mr. Woodruff said that he thought it would be better for Theodore Tilton to be sole proprietor of the paper; so I—

Q. Upon what occasion did he say that? What was the occasion of his saying that, do you know? A. I suppose it was at a time when the paper needed the further subscriptions that were called for.

Q. Called for the further subscription? A. I think it was.

Q. And the subscribers were not going to pay them? A. I don't know anything about that.

Q. How would it have been with yours? A. I should have paid mine.

Q. If the others had not? A. If the others had not.

Q. Why didn't you? A. For the reason that I have stated.

Q. Was it not the suggestion of Mr. Woodruff that the subscribers should not pay any more to that enterprise? A. I didn't so understand it.

Q. You did not so understand it? A. No, Sir; not to me.

Q. That was the effect of the suggestion when it was carried out.

Judge Neilson—That we know. We don't need to illustrate that.

Q. You say the object of this was to make Mr. Tilton sole proprietor of that paper. Was he not the sole proprietor of it already? A. I didn't consider him the sole proprietor of it.

Q. You did not? A. No, Sir.

Q. In whose name was that property? A. Theodore Tilton's, I suppose.

Q. Who else had any interest in its profits but Theodore Tilton? A. I don't know that anybody did.

Q. Or its losses? A. I should think that the subscribers did. If *The Golden Age* was a success I had that interest in it, as far as I was concerned.

Q. Had you had the success of Mr. Tilton's ability to pay? A. No, Sir, the success of the paper.

Q. Do you say that your subscription—that Theodore Tilton's notes were payable on condition that the paper was a success? A. Yes, sir; I think that was the phraseology, as far as I recollect.

Judge Neilson—That fact you stated before.

Mr. Tracy—I had reference to my cross-examination.

Judge Neilson—The comment was unnecessary. Interrogate the witness, but don't make observations. I take it that you, as a lawyer, would very likely think, in equity, that persons who did contribute to this fund would have an equitable interest in that establishment—could some day close it up—and upon this frame a bill to that effect, but this witness could not tell you how it is.

Mr. Evarts—It is purely a question of fact, and not of law. The question is whether they had any participation in the profits of this enterprise or its losses.

Judge Neilson—They had none except their money.

Mr. Evarts—I believe it is very clear that if the affair was not prosperous Mr. Tilton would not be able to pay them. I suppose it is very clear. The Court, I think, has got it wrong.

Judge Neilson—Go on, Mr. Tracy.

Q. Will you tell us on what conditions those notes were payable, or to be payable? A. Notes that Mr. Tilton gave to the subscribers, you mean?

Q. Yes, Sir. A. I think payable on the success of *The Golden Age*.

Q. Who was to determine that question?

Mr. Beach—I object to the form of that question.

Judge Neilson—[To the witness.]—Is the form of the note expressed?

The Witness—I don't recollect the precise expression, your Honor.

Mr. Tracy—That was the substance of it? A. Yes, Sir.

Q. These notes were not to be paid except in case *The Golden Age* was a success?

Mr. Beach—That is a matter of reason.

Q. Was not that the fact?

Mr. Fullerton—That has been stated over and over again.

Judge Neilson—[To the witness.] Is that so, that the notes were not to be paid except in case *The Golden Age* was a success? A. Unless *The Golden Age* was a success they were not to be payable.

Q. That you so understood? A. Yes, Sir.

Mr. Tracy—Now, he has answered the question.

Mr. Morris—He answered it before four or five times.

Mr. Tracy—Did you ever talk with Theodore Tilton about the publication of the poem entitled "Sir Marmaduke's Musings," before it was published? Did you know it until you read it in the publication? A. I think not.

Q. How long after the publication of this *Life* was the Steinway Hall meeting? A. I don't recollect the date of the Steinway Hall meeting.

Q. It is said to be November 20th. Do you recollect it was in November? A. November 20th of what year?

Q. 1871? A. I think it was in November, 1871.

Q. You had made the acquaintance of Victoria Woodhull some time in the Spring previous, you say? A. Yes, Sir.

Q. How often had you seen her from the Spring until the Steinway Hall meeting?

Mr. Beach—I think Judge Porter went over that question.

Judge Neilson—I think he did, too.

Mr. Tracy—If he asked that question, I will not ask it again.

Mr. Beach—He asked numerous questions on that subject.

Mr. Tracy—He did ask some questions on that subject—some general questions.

Mr. Beach—They were very specific questions. I think you are incorrect. If you are going to abandon that line of examination, very well; but if not, I insist it is a mere repetition.

Judge Neilson—Counsel ought not to repeat, and I trust he will not repeat, if he can avoid it.

Q. How often was Victoria Woodhull at your house during the year 1871? A. Well, perhaps four or five times.

Q. How often did she dine at your house?

Mr. Fullerton—This has all been gone over.

Judge Neilson—Not as to dining, I guess.

Mr. Fullerton—Yes, your Honor; it has been fully gone over.

By Judge Neilson—Do you recollect how often she dined with you, presuming she did dine with you?

Mr. Tracy—I think he said once to me that she did dine with him.

Judge Neilson—How often did she dine with you? A. I don't recollect how many times; I guess two or three times.

Mr. Tracy—Can you state more definitely than that? A. No, Sir.

Q. Did she meet your wife when she came there? A. Yes, she did.

Q. Did you urge your wife to make her acquaintance and become a friend of hers? A. I did become friendly to her.

Q. How often was she there in 1872 before you parted company with her? A. I don't recollect.

Q. Well, can you approximate to it? A. No, Sir.

Q. Can you not tell about how often she was there in 1872? A. No, Sir, I don't recollect that she was there in 1872.

Q. Do you mean to say you don't recollect whether she was there at all? A. In 1872?

Q. I am content with that answer if that is your answer. When did you see her last? A. I forget the date exactly. It was in the Spring of 1872, I think.

Q. The Spring of 1872? A. I think so; yes, Sir.

Q. Can you fix about the date? A. I think it was in April; I won't be certain about that. I answered Judge Porter that question.

Q. Did you see her last in company with Theodore Tilton? A. I think Theodore Tilton was with me on that occasion.

Mr. Morris—Judge Porter went minutely over all this.

The Witness—Yes, Sir, he did.

Mr. Morris—All these questions were asked over and over again. Is it in order that they may come in to-morrow and go over this again, and so continue it?

Mr. Tracy—I am not repeating questions I asked.

Mr. Morris—Yes, but you are repeating questions your asso-

ciate asked; the same questions and the same subject were gone over minutely by Judge Porter.

Judge Neilson—[To Mr. Tracy]: You are about through with that?

Mr. Tracy—I am not, Sir.

Mr. Morris—We object. We say this subject was gone over minutely by Judge Porter, and exhausted by him.

Mr. Beach—Not only that, but there was an offensive particularity in the questions put by Judge Porter on this subject, conveying the most indecorous implication.

Mr. Evarts—That does not bear on this question.

Mr. Beach—Yes, Sir; it does.

Mr. Fullerton—You ought to have a suggestion on this subject, whether you are reexamining him on the subject Judge Porter went over.

Mr. Morris—We appeal to the stenographer's minutes, and say he is going over the same ground that has been gone over already.

Judge Neilson—Mr. Shearman, have you the book here?

Mr. Evarts—Yes, Sir; we will look.

Mr. Tracy—The question is whether he parted with her in company with Theodore Tilton.

Judge Neilson—That mere circumstance would not prevent you from reëntering on the general subject.

Mr. Tracy—Judge Porter didn't examine in detail on this subject any more than he did on any other that I am aware of.

Judge Neilson—You have the report before you. Can you find it?

Mr. Shearman—It will take some time?

Mr. Beach—Yes, Sir, it will take some time; it is quite protracted.

Mr. Shearman—We will state the substance of it.

Mr. Fullerton—I can state it from memory.

Mr. Evarts—We will look at it to see?

Judge Neilson—Gen. Tracy, pass that subject, and we will look at that in the mean time.

Mr. Beach—Well, perhaps the next question will not be objectionable.

Mr. Shearman—Mr. Tracy suggests to me it was not covered by Judge Porter's examination.

Mr. Tracy—My last question was preliminary to the question I am now about to put. Did you and Mr. Tilton have any difficulty with her at the time you last saw her? A. I don't recollect that we did.

Q. Was it the occasion of the article known as "Tit for Tat" that you saw her at that time? A. I don't recollect any such article at that time.

Q. You don't recollect any such article at that time? A. No, Sir, not at that time.

Q. Do you recollect that article called "Tit for Tat?" A. I never saw such an article.

Q. You never were present at any interview between Mr. Tilton and Mrs. Victoria Woodhull when that was the subject of conversation? A. No, Sir; not that I recollect of.

Mr. Tracy—Then that answers this question on that subject.

Mr. Fullerton—I suppose so.

Q. Did you ever see that article called "Tit for Tat?"



Mr. Fullerton—He said twice he never did.

Mr. Tracy—I don't remember that.

Mr. Fullerton—Then I understand we adjourn, if you don't remember that.

Judge Neilson—No, we have half an hour yet; we lost half an hour this morning.

Mr. Fullerton—We lost a great deal since.

Mr. Tracy—I have reference to an article called "Tit for Tat."

Mr. Evarts—It is 4 o'clock.

Mr. Tracy—I will ask this question now. [To the witness]: Did you ever hear of an article from Mr. Tilton, which Mrs. Victoria Woodhull proposed to publish, called "Tit for Tat?" A. I don't recollect of ever having heard of it from Mr. Tilton.

Q. Did you ever hear from Mr. Tilton of an article proposed to be published by Mrs. Woodhull, which she sent around for private circulation, threatening to publish in it the names of certain ladies that were mentioned? A. Did I ever hear of that article?

Q. Yes, Sir, from Mr. Tilton? A. I don't recollect that I ever heard of it from Mr. Tilton.

Q. And you never had any interview with Mrs. Woodhull on the subject of such an article? A. I don't recollect that I ever did.

Q. Was the last interview that you had with her friendly? A. It was, as far as I was concerned, a friendly interview.

Q. Was it, as far as she was concerned? A. Yes, Sir; I think it was.

Q. Was it also friendly on the part of Mr. Tilton? A. I don't recollect that it was unfriendly.

Judge Neilson [addressing the Jury]—Gentlemen, we will now adjourn. Please be in your places by eleven o'clock to-morrow morning.

The Witness—Can I step down, your Honor?

Judge Neilson—Yes, Sir. I wish the witnesses and counsel would be here punctually at 11 o'clock to-morrow.

Mr. Mallison—The Court now stands adjourned until to-morrow morning. The counsel and witnesses are respectfully requested to be punctual at that hour.

The Court thereupon adjourned until 11 o'clock Friday.

## TENTH DAY'S PROCEEDINGS.

### MORE QUESTIONS TO THE FIRST WITNESS.

#### NUMEROUS WRANGLES BETWEEN THE LAWYERS—

#### THE ARBITRATION PROCEEDINGS BETWEEN MR.

#### TILTON AND MR. BOWEN SIFTED—ATTEMPT TO

#### CONNECT THE PLAINTIFF WITH FREE LOVE DOCTRINES—THE TRIPARTITE COVENANT TAKEN UP

#### —THE CROSS-EXAMINATION NOT CONCLUDED.

Friday, Jan. 22, was perhaps the least eventful day of the great trial. There was no sensation for the entertainment of the audience, and there were no opportunities for brilliant and effective repartee by counsel on either side. The proceedings of four hours bristled with technicalities, and the war of words was almost entirely waged in side issues.

The arguments of the lawyers occupied most of the time of the Court, and the success seemed equally divided. The subject upon which Mr. Moulton was first questioned was the business connection between Mr. Tilton and Henry C. Bowen, principally in regard to the disruption of their relations, and the settlement of the controversy by arbitration. During his examination regarding the latter point the witness seemed anxious to offer some bit of evidence which Mr. Tracy, with equal anxiety, tried to suppress. However, when Mr. Moulton was finally asked what the result of the arbitration was, he replied, "The payment of \$7,000 by Mr. Bowen; but," he added quickly, and before Mr. Tracy could check him, "Mr. Bowen had offered \$5,000 before the decision of the arbitrators." By the amused glances exchanged by the counsel of Mr. Tilton, it was apparent that they believed that Mr. Moulton's gratuitous information had dulled the point of their opponents' weapon.

The tripartite agreement was introduced as evidence by Mr. Evarts, who read the document with great seriousness and emphasis, and invested the covenant with a solemnity which a casual reading would not discover. This is the first time that the original agreement has appeared in court. It is written on ordinary legal-cap, and the name of Mr. Tilton is so blotted as to be almost unrecognizable.

The biography of Victoria Woodhull was shown by Mr. Evarts, who desired to place it in evidence. He held it up and with a voice slightly touched by sarcasm he read the title page from the beginning to the end, taking pains to show that it was one of "The Golden Age Tracts." Judge Neilson ruled it out immediately, and Mr. Evarts in an address of nearly 10 minutes endeavored to show that the book identified Mr. Tilton with Mrs. Woodhull's doctrines regarding the marriage relation. But Judge Beach repudiated that idea, and said, moreover, that no proof had been presented that Mrs. Woodhull was a believer in free love. Mr. Evarts effectually demolished the latter argument by producing a newspaper article put in evidence by Mr. Beach himself, in which Mrs. Woodhull avowed herself to be a free lover. But Judge Neilson would not change his original decision, saying that the matter was not pertinent, and adding, "Suppose Mr. Tilton had written a life of Mr. Bowen?" Mr. Tilton, with an involuntary shake of the head, expressed his opinion of such a supposition.

At the afternoon session the witness was examined regarding Mr. Tilton's sources of income.

Mr. Moulton was asked at this point to give the name of a person who had given money to him for Mr. Tilton. The witness appealed to the Court that he be not obliged to answer, and a long contest followed as to the propriety and justice of the admission of the names of outside persons. Judge Neilson left it to the judgment of the defendant's counsel whether they would demand the name, but he so couched his language that it would have been exceedingly discourteous had the counsel insisted on revealing the name, and accordingly it was not brought out. A sharp cross-examination of an hour followed the last argument, in which at times Mr. Tracy became very aggressive in his questions, and the witness rather aggravating in his replies. A vigorous attempt was made to cause a part of the statement of the scandal in *Woodhull and Claflin's Weekly* to be read in evidence, but so strongly was the motion opposed by Messrs. Beach and Fullerton, and so tenaciously did they contest every point, that that part of the examination was temporarily abandoned by the defense.

At 10 minutes after 4 o'clock Mr. Tracy paused and suggested that it was time to adjourn. Judge Neilson was quick in expressing his disapproval of continuing the cross-examination of Mr. Moulton next week. Professional and judicial reputation was at stake, he said. The witness had already been on the stand four and a half days. Mr. Moulton smiled, and said he was willing to continue all night, if necessary. The lawyers carried their point, and the Court adjourned until 11 a. m. on Monday.

#### TRIAL SCENES.

If there were anything which would be likely to diminish the number of spectators attendant daily upon the Brooklyn suit, the disagreeable condition of the weather on Friday might have been expected to have that result. Slippery, sloppy sidewalks and a drizzling rain-storm, varied at intervals by a fall of hail, were made matters of minor import by those who determined to witness for themselves the progress of the great trial. Considerations of personal comfort, wet feet, the risks of all the ills that flesh might fall heir to through exposure to the weather, were overborne by the strained eagerness of curiosity. Hence the court-room was crowded as usual for a full half hour before the opening of the proceedings. The corridor running by the door of the room was jammed with the same noisy crowd noticed upon previous days. Why they were there is one of those

things past finding out. There was nothing for them to see but the closed doors of the court-room and two stalwart but shivering officers standing guard. There was nothing for them to hear but occasionally the faint murmur of lawyers' voices. Yet the crowd stood for hours upon the cold pavement, waiting Micawber-like for something to turn up. Many of these people came from distant parts of the city, and some from other States. One old man, apparently over three score and ten, was very much depressed in spirits because he was unable to obtain admission. Taking by the hand a reporter who was about to enter the court-room, the aged man said with tears in his eyes that he had come all the way from Elizabeth, New Jersey, to see the trial. "And," he added, "if I don't get in thar and get one look at Henry Ward Beecher, my wife Sairy will fret and scold dreadfully."

The examination on Friday was rather tedious, and the only thing which relieved the dullness of the proceedings was an occasional wrangle between counsel. At times Mr. Beecher leaned back in his chair with a weary expression upon his ruddy countenance, and from 3 o'clock until 4 he appeared to sleep soundly. Mrs. Beecher seemed tired too, and as for Moulton he yawned frequently, and moved about uneasily in his chair. Shortly after the recess a juror left the court-room for a few moments, and the witness drew a sigh of relief. The air in the room was foul and heavy, and this may account for the sleepy appearance of the jurymen. Indeed, the counsel themselves seemed under some soporific influence. In the gallery, several individuals who followed the opening of proceedings with interest, slumbered sweetly in the afternoon. The Judge himself seemed drowsy. At recess, Mr. Moulton and Mr. Evarts held a brief conversation. That it was entirely of a friendly character was apparent from the smiling way in which they addressed each other. This incident for a time prevented the spectators from falling into dreamy unconsciousness, and they were accordingly grateful.

Since Monday several extravagantly dressed women have applied for seats in court without success, and even on Friday, disagreeable as the day was, two or three women tried to obtain entrance. Mrs. Shearman, Mrs. Tilton, Mrs. Beecher, and Mrs. Field were the only ladies admitted.

Judge Henry M. Moore occupied a seat beside Judge Neilson in the afternoon. Francis B. Carpenter sat near Theodore Tilton, and Henry M. Cleve-



land, a member of the Plymouth Church Investigating Committee, was seated by the side of Mrs. Beecher during the morning session. The Hon. Henry C. Murphy, the Hon. H. W. Slocum, and the Hon. John Oakley were in their accustomed places.

#### THE PROCEEDINGS.

Ex-Judge Porter is still absent from the Court. Gen. Tracy took up the cross-examination of Mr. Moulton on Friday, Jan. 22, with reference to Woodhull's relations with Mr. Beecher and Mr. Tilton. The next subject touched in the cross-questioning, was Tilton's contracts with Bowen. The day was about the duller of the trial thus far.

#### WOODHULL'S STEINWAY HALL LECTURE.

Francis D. Moulton was recalled, and the cross-examination resumed.

Judge Neilson—I wish, before we commence, to ask the audience to be quiet. This one request made now, well understood, will save the necessity of saying anything about it all day. Our time is very precious; every interruption wastes time.

Mr. Tracy—Mr. Moulton, did you advise the defendant to preside for Mrs. Woodhull at the Steinway Hall meeting? A. I don't think I did, Sir.

Q. Were you furnished with her speech in print before the meeting? A. I was not, Sir.

Q. Did you have it in your possession before that time? A. I did not, Sir.

Q. Did you ever see it before that? A. I did not, Sir.

Q. Was Mr. Tilton furnished with it in your presence? A. Never.

Q. Did you see it in manuscript? A. Never.

Q. Was it furnished to Mr. Tilton in your presence in manuscript? A. Never.

Q. Was any paper furnished him which was said to be her speech that she was to deliver at the Steinway Hall meeting? A. In my presence, Sir?

Q. Yes, Sir. A. Never.

Q. Did you ever see it in Mr. Tilton's presence? A. I never did.

Q. In Mr. Tilton's possession? A. I never did.

Q. Were you ever present when Mrs. Woodhull and yourself and Tilton were present, when Mr. Tilton urged Mr. Beecher to preside at the Steinway Hall meeting? A. I don't recollect, Sir, that I ever heard Mr. Tilton urge Mr. Beecher to preside. I think I have a letter, Gen. Tracy, from Mrs. Woodhull to Mr. Beecher on that subject.

Q. That has been introduced, hasn't it? A. I don't know whether it has or not.

Mr. Tracy—I think it has; has it not, Mr. Beach?

Mr. Beach—The letter of Mr. Beecher in answer to it, or proposed letter, has been introduced.

The Witness—It is a proposed answer to another letter, Mr. Beach.

Q. Did you and Mr. Tilton ever take Mrs. Woodhull into the presence of Mr. Beecher and attempt—undertake to persuade

him to preside at that meeting? A. Will you ask the question again, Gen. Tracy?

Mr. Tracy—Will the stenographer read the question?

THE TRIBUNE stenographer repeated the question.

A. No, Sir; I don't remember any such occasion as that.

Q. Did you ever go into his presence together, you three, for that purpose? A. I don't recollect whether we three went, Mr. Tracy, but I recollect that Mrs. Woodhull and myself were in Mr. Beecher's presence.

Q. Well, I am talking about you and Mr. Tilton and Mrs. Woodhull. Did you ever hear Mr. Tilton, in the presence of yourself and Mrs. Woodhull, say to Mr. Beecher, "Mr. Beecher, some day you have got to fall. Go and introduce this woman and win the radicals of the country and it will break your fall?" A. I don't remember ever having heard that, Sir.

A. You were never present at any such interview, to your knowledge? A. No, Sir.

Q. Were you present at the Steinway Hall meeting? A. I was; yes, Sir.

Q. Did you go there in company with Mrs. Tilton? A. I did.

Q. Did Mr. Tilton preside? A. He introduced Mrs. Woodhull.

Q. Well, did he preside? A. To that extent.

Q. Who occupied the chair? A. I think he did, Sir. Is that what you mean by presiding?

Q. I leave that for you to determine what you mean by presiding. A. I want to answer your question properly, that is all. I beg pardon, Sir.

Q. Did he occupy the chair and introduce Mrs. Woodhull on that occasion? A. He introduced Mrs. Woodhull and then occupied the chair afterwards. [Laughter.]

Q. Well, he did not take the chair before introducing Mrs. Woodhull? A. I remember his walking to the front of the platform with his overcoat in his hand, and introducing her. That is my recollection of it. I am giving it as I remember it.

Q. Did you listen to her speech that night? A. To almost all of it. I don't know that I heard the whole of it.

Q. What was the subject of that speech? A. I don't recollect, Sir, what the subject was. I don't recollect what she called the title of her speech.

Q. Well, you heard it? A. Yes, Sir.

Q. Don't you remember on what subject it was, what subject she discussed in that speech? A. Well, I cannot recollect, Sir, definitely enough to state it accurately.

Q. Can't you state the point of the speech. A. It was the relation of man to woman, I guess, and woman to man, as near as I can state it, and woman to society.

Q. Wasn't it on the marriage relation? A. I really don't recollect, Sir, whether that was the title or not.

Q. I didn't ask you about the title. A. You asked me what the speech was on, whether it was on the marriage relation.

Q. Yes; I asked you whether the subject of her speech was not the marriage relation? A. That, I say, I cannot tell you.

Q. You can't tell that? A. No, Sir.

Judge Neilson—I think you have gone far enough with that, Mr. Tracy.

Q. Was it not what is called the doctrines of free love?

Judge Neilson—General, do you wish to go into that ?

Mr. Tracy—I do.

Judge Neilson—If you do, I will spend all day, but I don't think it is pertinent.

Mr. Tracy—We would not have asked the question unless we had thought it pertinent.

Judge Neilson—I think it is not, Sir.

Mr. Tracy—We bow to the opinion of the Court.

Judge Neilson—My view is simply this: if Mr. Tilton, before he introduced this speaker, knew what the speech was, had seen it, and had been furnished with it, and then introduced her, he would be responsible for what was said; but if he did not know what the subject was, the mere fact of his introducing the speaker does not make him responsible for what followed; it does not affect it. That is my view of it.

Mr. Tracy—We can only show one fact at a time, your Honor. We show that he introduced her, and heard the speech. Then we may show by other witnesses that he knew what the speech was to be before it was delivered.

Judge Neilson—When you can do that, resume this subject.

Mr. Tracy—And recall this witness?

Judge Neilson—Any way you please.

Mr. Tracy—We desire to have this question answered now.

Judge Neilson—I rule it out.

Mr. Tracy—Your Honor will note our exception.

Mr. Evarts—Will the stenographer read the question?

THE TRIBUNE stenographer read the question as follows:

"Q. Was it not on what is called the doctrines of free love?"

Mr. Evarts—Is that objected to on the other side?

Judge Neilson—I do not understand it. I objected to it.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—I will

Mr. Evarts—Your Honor directs it not to be answered?

Judge Neilson—I do.

Mr. Evarts—And we except.

Mr. Tracy—Do you know whether the friendly relations between Mr. Tilton and Mrs. Woodhull continued after that speech? A. I think they did, Sir. What was the date of the speech, Sir? What was the date of the Woodhull speech, if you please?

Q. Nov. 20th, 1871? A. Yes.

Q. Did your friendly relations with Mrs. Woodhull continue after that speech? A. Yes, Sir.

Q. Did you have her at your house after that speech? A. I don't recollect.

Q. You don't recollect? A. No.

Q. Don't you recollect that you did not? A. I have not any recollection about it, Sir.

Q. You speak of a day when Mrs. Woodhull was at your house, when the subject of her speech was talked of. Was Mr. Tilton present at your house on that day? A. He was there, I think, Sir.

Q. With her? A. I don't remember whether he was with her or not, Sir.

Q. Was he in the house and in her presence that day? A. I think he saw her on that day; yes, Sir?

Q. And conversed with her? A. I think he did; yes, Sir.

Q. Do you know whether he went away with her? A. I don't recollect that, Sir.

Mr. Tracy—Now I renew the question that I put before.

Judge Neilson—He may answer it now. [To the stenographer.] Read the question.

THE TRIBUNE stenographer read the question, as follows: "Was it not on what was called the doctrines of free love?" A. I don't know precisely the doctrines of free love, and therefore I cannot answer that question. I should suppose that the public construed it so, Sir, if you will allow that.

Q. Yes; that is enough. You mean by the public, the people who heard it, don't you?

Mr. Beach—Well, we don't want his supposition as to what others construed it.

Mr. Evarts—Well, that is enough.

Judge Neilson—That will answer.

#### TILTON'S TROUBLE WITH BOWEN.

Q. You have stated that you was Mrs. Moulton's attorney for the collection of the Bowen claim.

Mr. Beach—Mr. Tilton's attorney, I suppose you mean?

Mr. Tracy—Mr. Tilton's attorney for the collection of the Bowen claim.

Mr. Beach—He didn't state that. He said he had that authority.

Mr. Morris—The authority has been introduced, and he said that he had the authority.

Mr. Tracy—And the power of attorney is in evidence, isn't it? The Witness—No, Sir.

Mr. Morris—He said he didn't know whether you would consider it an attorney or not.

Mr. Tracy—I mean the attorney in fact.

Judge Neilson—The very question was put to him before and he was troubled about the word "attorney."

Mr. Tracy—Well, agent, then.

The Witness—Mr. Tilton authorized me—which is the fact—generally to settle his claim with Mr. Bowen.

Q. Did you undertake the charge? A. Yes, Sir; I did.

Q. To collect that claim of Mr. Bowen? A. Yes, Sir; I did.

Q. When did he authorize you first? A. About January 1st or 2d; January 1st, I think. The letter will show, Sir.

Q. And in pursuance of that authority did you see and have an interview with Mr. Bowen? A. Yes, Sir.

Q. Did you present Mr. Tilton's claim to him? A. Yes, Sir.

Q. What amount did you demand of him? A. I think it was something like \$7,000.

Q. What was his answer to the claim when you presented it?

Mr. Fullerton—I don't think that is material, Sir.

Judge Neilson—As they have a right to ask whether it was presented, I think they may take the answer that Mr. Bowen made as a part of the same thing. It is, I believe, very immaterial.

Mr. Fullerton—Of course, and we may follow it up by showing that it was a good claim and all paid for.

Mr. Evarts—The materiality, your Honor will see, will depend upon what the answer was.

Mr. Tracy—What was his answer to the claim? A. He said



he didn't think he owed Mr. Tilton any money, and that he would arbitrate if I thought he did.

Q. Why ?

Mr. Evarts—Did he say ?

Mr. Tracy—Did he say why he didn't think he owed Mr. Tilton any money ?

Mr. Beach—Are those declarations to be permitted, Sir ?

Judge Neilson—We took them the other day, and this same answer.

Mr. Beach—What if we did, Sir ? That is another reason why it should not be received to-day. But I submit to your Honor that it is entirely immaterial what Mr. Bowen may have said in regard to the reasons why he resisted that claim.

Judge Neilson—I think so, too.

Mr. Evarts—Our view, if your Honor please, is simply this : that Mr. Tilton, having put Mr. Moulton as his representative in the prosecution—presentation, prosecution, negotiation and settlement of that claim, what passed between Mr. Bowen and the other side and this witness is as if it passed between Mr. Bowen and Mr. Tilton ; and that we have the same right to show it as if the conversation was between Mr. Bowen and Mr. Tilton.

Judge Neilson—So far as it relates —

Mr. Evarts—So far as it relates to the subject. That is our view, and if your Honor excludes that view as suitable, then it comes under some other rule of law ; but that is our proposition.

Judge Neilson—I think you may answer that.

Mr. Fullerton—Are we to try the merits of that controversy ? The validity of that claim did not depend at all upon what Mr. Bowen said of it. Are we to go into the trial of that claim over again ?

Judge Neilson—Of course it is going to the extreme. Mr. Bowen might say many things that a gentleman ought not to say on being presented with that claim.

Mr. Fullerton—Well, your Honor, they will contend upon the other side that this claim was unfounded, because Mr. Bowen probably said at that time it was unfounded.

Judge Neilson—He has not said that. He said he didn't owe him any money, the other day.

Mr. Fullerton—Now, if that is proved in this case, why, it is necessary for us to disprove it by showing it was a legitimate claim, and introduce these contracts in evidence for the purpose of determining that question. Your Honor will perceive that Mr. Bowen could not create a defense on that occasion to this claim. Suppose he had alleged that Mr. Tilton had broken his contracts, it would not establish the fact. Suppose he had alleged the contracts were forgeries, it would not have established the fact. We certainly cannot go into that side issue here, although we have not any apprehension as to the result, but we have got enough on our hands here without trying that cause over again, which has been settled by arbitration, as we all very well know.

Mr. Evarts—It will be time to question our right to try that cause over again when we attempt to do so. It is not likely that we shall ; we have no occasion to try it over again. Your Honor has ruled on the question.

Judge Neilson—You will answer, Mr. Moulton, with especial care to the question of the claim and its validity, and not extraneous matters. What answer do you make ? A. What is the question ?

THE TRIBUNE stenographer read the question as follows : "Did he say why he did not think he owed Mr. Tilton any money ?" A. No ; he did not say why, Sir. He said he did not think he owed Mr. Tilton any money, and if I thought he did he would be willing to arbitrate.

Q. When was that interview ? A. It was in the first part of January, between January 1st and January 10th, Sir.

Q. What was the next step you took after that in the collection of this claim ? A. I saw Mr. Bowen at my house ; he came there ; he came to the house and said again that he was willing to arbitrate, and although Mr. Tilton had told me, in the meantime, that he was perfectly willing to arbitrate, I said that I did not want to arbitrate, and I said, "Mr. Bowen, this is my reason. The contract provides—there is a specific provision in the contract with regard to the termination of it in the way that you have terminated it. The contract has a plain provision—has several plain provisions alluding to its termination ; that is, it can be terminated at the end of six months by notice without the payment of any penalty ; or it can be terminated by death, or it can be terminated at once by the payment of a certain sum of money." I forget what that was now ; I think it is \$2,500 or \$3,000. Whatever it was, I mentioned it to him ; it was mentioned in the contract. He said that he thought the contract required arbitration ; that there was a provision in the contract that if there was any difference between the editor of the paper and the publisher, that then the contract provided that the interpretation of the contract with reference to that difference should be submitted to arbitration ; and I said to him : "Mr. Bowen that provision—that section of the contract is with regard to the interpretation of Mr. Tilton's duties towards you as publisher—his duties as editor towards you as publisher—and of your duties as publisher towards him as editor. There is a difference between that clause and the one following it which is a plain provision for the payment of so much money on the breaking of the contract. Now on that ground I don't want to arbitrate." And there is another ground that was expressed to him, which, if you want me to tell you, I will.

Q. You may state what you expressed to him, now ? A. That is about it.

Q. What did he say to that ? A. He objected again ; he said he was perfectly willing to arbitrate.

Q. Did he say that he owed Mr. Tilton no money at that time ? A. No, Sir ; I don't think he said he owed Mr. Tilton no money. He was willing to leave the matter to arbitration.

Q. He was not willing to pay, however, without arbitration, was he ? A. No.

Q. Did you bring a suit against him for the claim ? Mr. Tilton did, I believe, subsequently.

Q. Well, did you direct the bringing of the suit ? A. Tilton, I believe, commenced the suit.

Q. You did not confer with counsel on that subject ? A. I don't think I conferred with counsel on that subject.

Q. Or employed them yourself? A. No; I didn't employ them or pay them.

Q. Then Tilton afterwards commenced the suit against Bowen? A. Yes, Sir,

Q. Do you know about what time? A. I forget the exact time. I think I have got a letter.

Q. Approximate to the time as nearly as you can? A. It was in the latter part of 1871 or beginning of 1872, I think.

Q. How many interviews have you had with Mr. Bowen on the subject of this claim, between the time of the last interview mentioned by you and the commencement of this suit? A. I don't know; several, Sir; I do not know how many.

Q. A good many had you not? A. Not a very great many; no, Sir.

Q. Didn't he ever say to you, in any of those conversations, that he thought he had good cause for breaking his contracts with Tilton? A. He said that he thought—on the first morning that I saw him, that was the conversation—he said, I think, the first morning that I saw him, that he thought he didn't owe Tilton any money.

Q. The question is not that—the question I put to you? A. Well, I will explain the answer, if you please.

Mr. Evarts—Go on. A. I have explained it, Sir.

Q. I will put you this question; Didn't Mr. Bowen, at any interview that you had with him, say that he thought he had good cause for breaking his contract with Mr. Tilton?

Mr. Evarts—That is already answered.

Q. Now, did he ever state to you in any of those conversations why he thought he had cause for breaking Mr. Tilton's contract? A. I do not recollect, Sir, that he stated to me the cause.

Q. Do you recollect that he did not? A. I haven't any recollection on the subject, Sir; whether he told me the causes, now or not; I do not think he did.

Q. Was there a period, when, after the suit was brought, you and Mr. Bowen ceased to have conversation in regard to the settlement of the claim? A. After the suit was brought, Sir, I think I did not see Mr. Bowen at all.

Q. Did not see him at all? A. I do not think I did, Sir; I do not remember of ever having seen him.

Q. Do you remember of seeing, at any time prior to this settlement of this claim, an article known as the "Golden Age Article," which had been prepared for print, embodying the letter of Mr. Tilton to Mr. Bowen, dated Jan. 1st, 1871? A. It is rather a long question.

[Question repeated by THE TRIBUNE stenographer.] A. I remember having seen a proof of an article for *The Golden Age*, corrected by Oliver Johnson, Sir, I think, with that letter in it; yes, Sir.

Q. Incorporating that letter in it? A. Yes, Sir.

Q. Was that article ever published in *The Golden Age*? A. No. I think not; don't recollect that it ever was.

Q. [Paper handed to witness]. I call your attention, Mr. Moulton, to the article on that paper, headed: "A Personal Statement." Will you look at it, and see if that is the article you refer to? A. I have the article that I refer to in the papers here; I would like to refer to it and compare them; I can tell then positively.

Q. Look at that. [Another paper handed to witness.]

The Witness—Do you only want me to look at the first part of it?

Mr. Tracy—I want you to satisfy yourself whether it is the article you saw.

Mr. Fullerton—Whether it is the paper you saw—that is the question.

Mr. Tracy—No.

Mr. Beach—Well, Mr. Pearsall, you had better read one.

Mr. Morris—Yes; go on and compare. [Mr. Pearsall here read a paper to the witness in an undertone, while the witness examined the paper in his hand.]

The Witness—There seems to be a disagreement between these—between the first paragraph.

Mr. Fullerton—Well, then, you can answer the question without explaining it.

The Witness—What is the question?

Mr. Tracy—Now, will you answer the question, whether you ever saw the article that is in print—the printed article that is attached to the paper I handed you. A. May I look at the whole paper?

Q. If you want to, yes; if it is necessary in order to tell whether you ever saw that article? A. Yes; I think I saw the article that was appended to the tripartite covenant. That is the reason I asked you if I could look at the whole paper, Mr. Tracy. Now, Mr. Pearsall, will you follow the reading—

Mr. Pearsall—I will read it. [Reading and comparison resumed by Mr. Pearsall and the witness.]

The Witness—Now, what is the question? Do you want this back, Mr. Tracy?

Mr. Tracy—Now, are you able to say whether you ever saw this printed article that is attached to this paper before? A. I can't swear, Sir, specifically, whether I ever saw that or not; I saw something like it.

#### PEACE DECLARED BUT NOT PRESERVED.

Q. The paper that I have presented to you is what is known as the tripartite agreement, isn't it? A. Yes, Sir.

Q. Were you present at that arbitration? A. I believe I was present at that arbitration; yes, Sir.

Q. Were you present when this paper was signed? A. I was not present when it was signed.

Q. Did you ever see it before? A. I think I have seen the paper before—yes, Sir; Mr. Beecher was not there, Sir, at that interview; so, therefore, I did not see it signed.

Q. I did not ask why you did not see it? A. Well, I was only telling you why.

Q. When did you see it first, do you think? A. When did I see it first?

Q. Yes? A. That paper I think I saw for the first time that night, Sir.

Q. Was the printed paper attached to it at that time? A. I don't remember whether it was or not, distinctly.

Q. Didn't you examine it that night as carefully as you have here to-day? A. My impression is that the printed paper was attached to it; I can't swear whether I examined it specifically or not.



Q. Don't you know it was attached to it? A. No; I could not swear that it was.

Q. Didn't you furnish it? A. Didn't I furnish it?

A. Yes? A. I don't remember that I did.

Q. Do you remember that you did not? A. I haven't any recollection as to whether I did or not.

Q. Do you know where that article came from, that printed paper that is attached to the tripartite agreement? A. I could not swear, Sir, as to where it came from.

Q. Do you know whether the plaintiff furnished it? A. Whether Mr. Tilton furnished it?

Q. Yes? A. I don't know whether he did or not.

Q. Did you ever see this printed article in anybody else's hands besides Mr. Tilton or yourself unattached to this paper? A. That printed article?

Q. Yes? A. I can't swear that I ever saw that printed article.

Q. Did you ever see what is known as the "Golden Age Article"? A. Yes, and I have just had the—I have just produced the one that I saw.

Q. In anybody else's hands besides yours and Theodore Tilton's? A. Yes; in Mr. Beecher's hands.

Q. In Mr. Beecher's hands? A. In Mr. Beecher's hands; yes, Sir.

Q. With the exception of the three that you have named, did you ever see it in any one else's hands? A. I can't swear whether it was ever in anybody else's hands or not.

Q. I did not ask you that; I asked you whether you ever saw it? A. In anybody else's hands?

Q. Yes? A. I can't swear that I ever saw it in anybody else's hands.

Q. You have no recollection of ever seeing it in any one else's hands? A. Except in Mr. Beecher's, Mr. Tilton's and myself?

Q. Yes? A. I think in Mr. Claflin's.

Q. In your presence? A. Yes; in my presence.

Q. During the arbitration? A. No; I don't think during the arbitration—before the arbitration.

Q. Before the arbitration? A. Yes, Sir; I think Mr. Claflin was given an article by somebody.

Q. How long before the arbitration. A. Oh! some time before the arbitration.

Q. By whom was he given the article? A. I don't recollect by whom it was given to him.

Q. Don't you recollect whether you gave it to him? A. I don't recollect whether Mr. Beecher handed him a copy of it, or whether Mr. Tilton handed him a copy of it, or whether I did.

Q. Were there two different articles printed from the office of *The Golden Age*, embodying this letter of January 1st? A. The article, Sir, that I remember to have seen is this proof which I produce here.

Q. Answer my question? A. I will try to; I am endeavoring to; I want to answer you courteously.

Q. Now, I ask you if there were two different articles printed from *The Golden Age* office embodying this letter of January 1st? A. I don't know of any two different articles except this one that you have in your possession and this one here, which seems to be different. I cannot answer the question, Sir, with-

out answering it in that way, intelligently. I submit to the Court.

Q. Will you pass up that paper? A. Yes, Sir; Mr. Morris has it. Is there any other way, your Honor, in which I can answer the question?

Judge Neilson—I don't think there is, Sir.

Mr. Tracy—Now, Mr. Tilton's signature is to this paper, isn't it? A. I will see, Sir. [Paper handed to witness.]

Mr. Tracy—You connect this paper with the arbitration, I understand, in all your questions to me?

Q. Yes? A. Well, the arbitration was before this paper was submitted—I would like to make that correction—it was the evening of the arbitration that this paper was submitted, but the arbitration was before this paper was signed on money matters.

Mr. Evarts—The paper was present at the arbitration? A. No; at the arbitration; no, Sir.

Mr. Tracy—The arbitration was one evening and— A. No, Sir; it was the evening of the arbitration. It was after the arbitration, on the evening of the arbitration.

Q. But after the arbitration? A. Yes, Sir.

Q. That this paper was submitted? A. Yes, Sir; by Mr. Claflin?

Q. Yes, and signed? A. Yes, Sir.

Q. Now did you show this "Golden Age Article" to Mr. Beecher at any time prior to that arbitration? A. Yes, Sir.

Q. Where? A. At my house.

Q. At your house? A. Yes, Sir.

Q. Do you know whether it was shown to Mr. Bowen by anyone prior to that arbitration? A. I think Mr. Claflin told me that he had shown it to Mr. Bowen; I won't be certain about that.

Mr. Evarts—Well, that is hearsay.

The Witness—I don't.

Q. Well, was Mr. Claflin Bowen's arbitrator? A. I don't know whether he was or not; he was one of the arbitrators; I think he was, however.

Q. You think he was? A. I think so.

Q. Do you know whether the article was also shown to Mr. Wilkinson before the arbitration by Mr. Tilton? A. I don't know that, Sir; could not swear that it was.

Q. What? A. I could not swear that it was; I don't recollect having seen it shown to him.

Q. How long before this arbitration was this shown to Mr. Beecher and given to Mr. Claflin? A. How long before the arbitration?

Q. Yes. A. It was some time before the arbitration.

Q. Well, can't you approximate the time? A. I don't remember, Sir, how long.

Q. Wasn't it in March, 1872? A. It was after Mr. Tilton's return from the West, whenever that was.

Q. Well, what time did he return from the West? A. I don't recollect the month, Sir; I don't recollect the month.

Q. How soon after you showed that article to Mr. Beecher and gave a copy of it to Mr. Claflin was the arbitration agreed upon? A. It was some time before we consented to the arbitration; we consulted the lawyers first about it.

Q. Did you give the article to Mr. Claflin with a view of

having it shown to Mr. Bowen? A. I don't remember whether I gave it to Mr. Claflin or not.

Q. How many talks did you have with Mr. Claflin prior to the arbitration? A. That, really, I don't recollect.

Q. You had some? A. Had one or two I guess.

Mr. Tracy—Now we offer the agreement in evidence.

Mr. Fullerton—No objection.

Mr. Evarts—No objection to my relieving Mr. Tracy?

Mr. Fullerton—Oh! I think you all need that.

Mr. Evarts [reading the tripartite agreement] :

We three men, earnestly desiring to remove all causes of offense existing between us, real or fancied, and to make Christian reparation for injuries done or supposed to be done, and to efface the disturbed past, and to provide concord, goodwill and love for the future, do declare and covenant each to the others, as follows:

I.—I, Henry C. Bowen, having given credit, perhaps without due consideration, to tales and innuendoes affecting Henry Ward Beecher, and being influenced by them, as was natural to a man who receives impressions suddenly, to the extent of repeating them (guardedly, however, and within limitations, and not for the purpose of injuring him, but strictly in the confidence of consultation), now feel that therein I did him wrong. Therefore I disavow all the charges and imputations that have been attributed to me as having been by me made against Henry Ward Beecher; and I declare, fully and without reserve, that I know nothing which should prevent me from extending to him my most cordial friendship, confidence, and Christian fellowship. And I expressly withdraw all the charges, imputations, and innuendoes imputed as having been made and uttered by me, and set forth in a letter written by me to Theodore Tilton, on the 1st of January, 1831 (a copy of which letter is hereto annexed), and I sincerely regret having made any imputations, charges, or innuendoes unfavorable to the Christian character of Mr. Beecher. And I covenant and promise that for all future time I will never, by word or deed, recur to, repeat, or allude to any or either of said charges, imputations, and innuendoes.

II.—And I, Theodore Tilton, do, of my free will and friendly spirit towards Henry C. Bowen and Henry Ward Beecher, hereby covenant and agree that I will never again repeat, by word of mouth or otherwise, any of the allegations or imputations or innuendoes contained in my letters hereto annexed, or any other injurious imputations or allegations suggested by or growing out of these, and that I will never again bring up or hint at any cause of difference or ground of complaint heretofore existing between the said Henry C. Bowen and myself, or the said Henry Ward Beecher.

III.—And I, Henry Ward Beecher, put the past forever out of sight and out of memory. I deeply regret the causes for suspicion, jealousy and estrangement which have come between us. It is a joy to me to have my old regard for Henry C. Bowen and Theodore Tilton restored, and a happiness to me to resume the old relations of love, respect and reliance, to each and both of them. If I have said anything injurious to the reputation of either, or have detracted from their standing and fame as Christian gentlemen and members of my church, I revoke it all and heartily covenant to repair and reinstate them to the extent of my power.

H. C. BOWEN.  
THEODORE TILTON.  
H. W. BEECHER.

Brooklyn, April 2, 1872.

Annexed to this is a paper called "A Personal Statement." It is headed thus in writing: "Theodore Tilton's letter to Mr. Bowen above mentioned," and then begins the printed matter; "A Personal Statement" being the heading of the article. [Again reading]:

The editor of *The Golden Age* has been many times solicited by friends and encouraged by enemies to explain the sudden sundering of his relations with Mr. Henry C. Bowen. For a long time his only answer to such requests and innuendoes, was the silence which ought to shield one's private matters from public gossip. But, during a recent journey of some thousands of miles through the North-West, among people whose familiar acquaintance he had made in former years, and whose good opinion he is unwilling to lose, he became convinced that a proper sense of self-respect required on his return the publication of the appended letter. It was written within a few hours after the severance of his business associations with Mr. Bowen and was confided to the care of a friend, by whom its contents were laid before the person to whom it was addressed. As so many false stories had been told of the occurrence to which it refers, the writer has finally determined to confront these fictions with the facts. After many months of ever-increasing misrepresentation, not to say slander, this course is now imperative."

And the rest of the article is, if your Honor please, the letter from Mr. Tilton to Mr. Bowen, of the date of "Brooklyn, Jan. 1st, 1871," which is already in evidence.

Mr. Fullerton called Mr. Evarts's attention to the fact that the article was continued on another page.

Mr. Evarts—I beg pardon. I see another page. After that letter the article proceeds:

As a sequel to the above letter, it should be added that Mr. Bowen, after charging Mr. Beecher with extraordinary criminality after declaring that the accused had made to him a confession of guilt, imploring forgiveness with tears; after investigating a demand that Mr. Beecher should forthwith vacate his ministry; after protesting that he could and would sustain this demand with complete evidence for its enforcement; after acting as the bearer of this demand in person—after all this, he went immediately to Beecher in the guise not of accuser, but of champion, and pledged to him the protection of his friendship and counsel against the very indictment which he himself had inspired, incited and presented. In other words, while secretly arranging Mr. Beecher's destruction he openly presented himself to his victim as his safeguard and refuge. In the whole history of treason there is no darker instance of shameless duplicity and malicious craft. The writer, wholly unsuspecting of the double part which Mr. Bowen was dexterously playing, was first made aware of this villainy by the excited conversation above described, followed immediately by the termination of his engagement as a special contributor of *The Independent* and as editor of *The Union*, the contracts having been just newly made and the ink with which they were signed being hardly dry. When a copy of the above letter was laid before Mr. Beecher he indignantly denied Mr. Bowen's charges, each and all, and with peculiar anger pronounced the alleged confession of guilt the most diabolical of lies. With the issue between these two contestants the editor of *The Golden Age* has nothing to do, except to regret the painful necessity which now at last compels the above publication involving their names.

[Paper marked "Exhibit D, 25."]

#### THE TILTON-BOWEN ARBITRATORS.

Mr. Tracy—This paper, as I understand you to say, was present at the arbitration, or the same evening of the arbitration, but after the arbitration was concluded? A. Yes, Sir.

Q. Who were the arbitrators on that occasion? A. Charles Storrs, Horace B. Claflin and James Freeland.



Q. Who was Mr. Tilton's arbitrator? A. I really don't know.

Q. Was it not understood that each party chose one? A. I don't know how they were chosen; they were agreed upon between Mr. Clafin, Mr. Tilton and myself in some way; I don't recollect exactly how they were chosen.

Q. Don't you know who named Charles Storrs? A. I don't know.

Q. Don't you know he was named as the friend of Mr. Tilton on that arbitration? A. I don't remember that.

Q. What was the result of the arbitration? A. The result of the arbitration was—I might mention an instance, Gen. Tracy, before the arbitration, if you desire it.

Mr. Tracy—Please answer my question. We will get on more rapidly if you do. A. The result of the arbitration was that Mr. Tilton was awarded \$7,000.

Q. To be paid by Mr. Bowen? A. Yes, Sir.

Q. Was that payment made? A. Yes, Sir; he drew his check for it there.

Q. And that is the \$7,000 that was subsequently deposited with your firm? A. Yes, Sir.

Q. Mentioned in the accounts here? A. Yes, Sir; I believe it is mentioned in the accounts.

Mr. Evarts—Yes, it is so mentioned.

The Witness—Yes, Sir; Mr. Bowen offered to pay \$5,000 before the arbitration, Mr. Tracy.

Mr. Tracy—Well, we will pass that. [To Judge Neilson.] That I take is stricken out, your Honor.

Judge Neilson—Well, it is not a falsehood.

Mr. Tracy—Did you witness any reconciliation between Mr. Tilton and Mr. Beecher after that contract was signed? A. I don't recollect witnessing any reconciliation.

Q. Did you witness any friendly act between them immediately after the signing of that contract? A. No more friendly than before—nothing to distinguish the previous action.

Q. Did you see them together after that frequently? A. No, Sir; I have not seen them together after that frequently; I have not seen them frequently together; I have not ever seen them frequently together.

Q. Did you see them after that together occasionally? A. Not very often, Sir.

Q. Occasionally? A. I remember one occasion.

Q. Not more than one? A. It was at my house; perhaps two or three; I don't know; I don't recall them now. If you can recall them to me I can answer.

Mr. Evarts [to plaintiff's counsel]—Will you give us "Exhibit No. 42?"

Mr. Morris [handing paper to Mr. Tracy]—There it is.

Q. Do you remember your letter to Mr. Beecher of Jan. 3d, 1872?

Mr. Morris—Jan. 2d, is it not?

Mr. Evarts [handing paper to witness]—Look at that "Exhibit." That is already in evidence—your letter answering that; don't you remember that letter? A. I remember it; I am looking over it to see all that is in it.

Mr. Tracy—I am not asking you that. [Handing paper to

witness.] I call your attention to the printed letter now shown you, and ask if it is your reply to "Exhibit No. 42?"

Mr. Shearman—Marked in pencil Jan. 3d, 1872.

The Witness—I think I wrote such a letter as that; I could tell if I saw the original.

Mr. Tracy—And sent it to Mr. Beecher? A. I think so.

Q. Do you know whether you have the original letter, or a copy of it, in your possession? A. I think I have a copy of it if it was in my statement.

Q. In manuscript? A. Yes, Sir.

Mr. Shearman—It is marked "Exhibit 66."

The Witness—It is quoted in my first statement, Mr. Shearman, is it not?

Mr. Shearman—Yes, Sir; I think so.

Mr. Morris—What is the date of it?

Mr. Shearman—It has no date. It is marked in pencil January 3d, 1872.

Mr. Tracy—I understand you to say you wrote Mr. Beecher such a letter. Was it in reply to "Exhibit No. 42"? A. I think it was; yes, Sir.

Mr. Shearman [reading]:

MY DEAR SIR: First with reference to Mrs. Woodhull's letter and your answer. I think that you would have done better to accept the invitation to speak in Washington, but if lecture interferes your letter in reply is good enough, and will bear publication.

With relation to your notice of *The Golden Age*, I tell you frankly, as your friend, that I am ashamed of it, and would rather you would have written nothing. Your early associations with, and your present knowledge of the man who edits that paper, are grounds upon which you might have so written that no reader would have doubted that, in your opinion, Theodore Tilton's public and private integrity was unquestionable. If the article had been written to compliment *The Independent*, it would receive my unqualified approval.

Mr. Fullerton—Is that marked?

Mr. Shearman—The stenographer will have to mark a copy of it.

[Copy of letter marked "Exhibit D, 26."]

Mr. Moulton—[Aside to a reporter.] This is dreadful; wake me up if I go to sleep.

Mr. Tracy—[Handing a paper to witness]: Is that *The Golden Age* tract, known as the Life of Victoria Woodhull by Theodore Tilton? A. I do not know whether it is or not.

Q. I understood you to say you read that?

Mr. Fullerton—No, you did not understand him so; you could not have understood him so.

Q. Did I ask you that question last night? A. I think you asked me something like that.

Q. Did you ever see that tract before? A. I think I have seen such a tract as this.

Q. Did you read what is known as the Life of Victoria Woodhull, when it was published? A. No, Sir.

Q. Did you read any part of it? A. I think I read some portion of it.

Mr. Fullerton—That has been gone over.

Mr. Tracy—You admit that is the Life as published?

Mr. Beach—I believe this is the first occasion when you have called for any admission.

# ARGUMENT ON THE ADMISSION OF THE WOODHULL BIOGRAPHY.

Q. Mr. Evarts—We offer this in evidence as The Golden Age tract.

Mr. Beach—We object to it.

Mr. Evarts—It is headed: "Golden Age Tract, No. 3; Victoria C. Woodhull, Biographical Sketch by Theodore Tilton. 'He that uttereth a slander is a fool.'—Solomon, Prov. x., 18.

"Published at the office of *The Golden Age*, 9 Spruce-st., New-York, 1871.

"Entered according to act of Congress, in the year 1871, by Theodore Tilton, in the office of the Librarian of Congress, at Washington."

We offer to read that.

Judge Neilson—It is offered, and I rule it out.

Mr. Evarts—On the subject of identification, or as not being admissible evidence.

Judge Neilson—Not being admissible evidence.

Mr. Evarts—It is necessary, perhaps, if your Honor please, to recall—

Judge Neilson—[To Mr. Evarts]—I will be happy to hear you.

Mr. Evarts—It is necessary to call your Honor's attention to some preceding testimony, which we think connects this with the matter. The time of this transaction, as I will point it out by testimony, was September, 1871, and it was after that that the Steinway Hall meeting was held, concerning which the evidence has now been given here and admitted. This was brought up yesterday, and there was then no copy in court that we could use at the moment. I did not then understand that there was any doubt or difficulty about the testimony. This writing of Theodore Tilton, if it be pertinent to this controversy, is, of course, an act of his, and of the consequences of which he cannot complain. It comes within the general rule of evidence that the acts of a party may be given in evidence against him. Now, it was this Life of Victoria Woodhull that produced the impression upon the public mind which was disastrous to Mr. Tilton's position as an editor, and of his newspaper as a public print. It was a most definite, authentic, deliberate form of allying himself in the view of a religious and general public with these doctrines of free love, and with this lady as one of its advocates and champions. It will speak for itself in that regard, and I will not further characterize it. Thereupon, in the disaster that followed from it, in culmination of a process that had been going on, the effort was made by Mr. Tilton, and by Mr. Moulton in coöperation with him, to compel Mr. Beecher to take no attitude in reference to these free love doctrines and in reference to this lady, one of the champions of such doctrines, that should indorse Mr. Tilton's relation to them, and indorse, to some extent at least (and presiding at a public meeting is a very general and definite extent for a public man to do) the doctrine of that school and of its champions; and the operations that were brought to bear upon Mr. Beecher in reference to these subjects of complaint and discussion, to produce that benefit, than which none could be more important. No mere pecuniary measure or aid could equal it. That was to reconstruct the ruin of the public position Mr. Tilton was thus

placed in, by softening or correcting it by the powerful influence of Mr. Beecher, and, as we have shown, this next step following about the Steinway Hall meeting, so we shall proceed, showing that all these efforts, as they are called, at suppression of facts, whatever they were, whichever side has the correct view of what the facts were, seem to have been easy enough in the control of the only parties who knew anything of them, if there were an honest and sincere co-operation in keeping what was a private grief, in whatever form it was, from the public notice. But, as this witness has detailed, every now and then there was coming out some publication—some discussion. There was the card of Mrs. Woodhull, in the Spring of 1871; there was later on afterwards the full publication of an article in the Fall of 1872; and so on, until finally, in the Bacon letter, there are constant introductions of the subject to the public notice, which we suppose, in the nature of facts and evidence and in direct proof to be introduced—partly introduced already—are connected with the movements of Mr. Tilton and knowledge and co-operation of Mr. Moulton, the witness, and that there was no sincerity, no action of a sincere nature, towards suppression, but the constantly keeping alive a condition more or less obscure, of scandal and reproach in reference to Mr. Beecher, made the occasions of the interview and the transactions which this witness has detailed with Mr. Beecher, and this Life of Victoria Woodhull, is the definite evidence of Mr. Tilton's prostration in fortune and in reputation in respect to his credit and vocation of an editor, and accounts for "Sir Marmaduke's Musings," which have been put in evidence by our learned friends.

Mr. Tracy—Published six weeks after this was written.

Mr. Evarts—Published six weeks after this catastrophe, by this extraordinary folly, if you please, of this publication. Now, in the poem of "Sir Marmaduke's Musings"—very eloquent and very beautiful, but very general, the course of ruin in which he finally came to succumb, contains the evidence of that destruction of worldly prosperity and of public repute as having relation to these matters of his public credit and of his commercial prosperity in regard to these matters of his editorship, and his connection and public influence as a lecturer. With that view, if your Honor please, we offer this evidence.

Mr. Beach—The argument which has been submitted by the counsel, it seems to me, your Honor, would be more appropriate in another and subsequent stage of these proceedings. It consists of assumptions of facts which I submit do not appear from the evidence, and of a system of reasoning which is simply argument, and, as we maintain, unfounded in the evidence. That the fortunes of Mr. Theodore Tilton, at the period spoken of, were prostrated, we do not propose to deny. That he was suffering pecuniary embarrassments and was enduring to a very considerable extent, for some reason or other, the disapprobation of a portion of the community, is certainly very distinctly apparent. If I understand the argument of the learned counsel, he proposes, by the introduction of this biography of Mrs. Woodhull, to attribute that decline in condition to its publication. In the first place, Sir, there is no evidence before your Honor creating any connection between the fortunes of Mr. Tilton and the publication of



this article. The proof of that fact would in itself be very difficult and necessarily indefinite unless the counsel were permitted to prove, by the opinions or declarations of others, the specific effect which it produced upon the community. But assuming that there are any legitimate means of evidence by which that assumption could be demonstrated, there is nothing yet in the evidence to show any relation between the two things. My friend, Mr. Evarts, gives very proper credit to the poetical effusion of this plaintiff, entitled: "Sir Marmaduke's Musings," and he assumes to say that that is but a poetical and pathetic description of the injury to his prospects and conditions produced by his connection with Mrs. Woodhull. Pray, your Honor, where is the evidence of that? It certainly has not yet been revealed, and is purely a matter of argument upon the part of the learned counsel. But, Sir, I do not propose here to answer this argument. As I said before, at the proper time, and I trust, in a proper manner, this whole theory of the defense will be examined upon the evidence and the facts revealed by that evidence. And it may be possible, Sir, that upon that occasion it will be easy to show that the misfortunes which fell upon this plaintiff originated from altogether a different and more efficient cause—a cause clearly and abundantly recognized by the defendant. Now, the specific objection to the introduction of this tract is, first, that there is not evidence sufficient to justify your Honor in attributing the authorship of this article to Mr. Tilton. It may be a technical objection to the nature of the proof, but yet, may it please your Honor, in the course of our evidence we have been driven by that sort of objection to a great deal of difficulty so far in the presentation of our evidence; as, for instance, driving us to the production of the archives of Plymouth Church, entirely under the command of the officers of this defense. We do not, therefore, choose to aid an objection of this character. The printing or professed printing of this paper at the office of *The Golden Age* attributing upon its title-page its authorship to Theodore Tilton, or the printing of an entry of the copyright in the proper office of the Government, by no means identifies or concludes Mr. Tilton upon the question of authorship, and therefore submit that until they make more clear and definite proof upon that subject that expression of itself is abundant. Now, I do not understand, Sir, that this paper is offered for any other object than to demonstrate the proposition of the counsel that this was the origin of the difficulties which at the time or subsequently embarrassed Mr. Tilton. Well, your Honor must necessarily look at the nature of the article itself for the purpose of determining whether it could have legitimately any such effect, whether it is material to establish that fact, and unless you see in the substance and character of the production a cause efficient to produce the results which are attached to it, of course in that view it is not receivable. Well, Sir, it is said that this lady, Mrs. Woodhull, at this time was a professor of what is called the free love doctrine. It is said that she was an advocate of the movement in favor of Women's Rights. Where is the evidence of that, Sir? The legitimate and proper evidence of the fact? A. True, in the lecture at Steinway

Hall, as this witness says, this lady lectured upon the relations existing and proposed as between man and woman, but where is the evidence that in that lecture there was any license, any improper theory advanced, any document of free love which would shock the moral and social sentiment of the community? As yet we have no proof upon that subject, and, from the information I have, at the time when these gentlemen were associated with this lady she by no means had promulgated any such tenets, or avowed any such opinions in regard to these relations, and your Honor will perceive, I think, that in all the elements to render this document essential or to associate the sentiments of Mrs. Woodhull and the connection of Theodore Tilton with those sentiments here concerned, the case so far is as barren of that sort of evidence which would permit the introduction of that argument, and upon these grounds, without pursuing this discussion, may it please your Honor, both in regard to the materiality of this paper and to its authenticity, we submit it is objectionable.

Mr. Evarts—I didn't understand your Honor as ruling this out on any question of identification of the paper.

Mr. Beach—I ask his Honor now to rule upon it.

Judge Neilson—Simply my opinion that it was not evidence; nevertheless I wished to hear you on that.

Mr. Evarts—I didn't make any observation, your Honor will remember, for I didn't understand it was necessary. Now my learned friends complain that, in raising this question of evidence, I have exposed a theory concerning this case, in regard to which evidence has been produced and is to be produced, and that I have assumed facts and then have connected those facts with reasoning, which he calls argument, as bearing upon that theory, and he says that he shall, at the proper time, comment upon that theory and also enforce his own. That he will do and that we shall do. But the intermediate questions that arise are that the law shall furnish appropriate and pertinent evidence that may be invoked by the one side and the other properly in support of their theories, and the burden no doubt is upon us when asked by your Honor to show how a paper that in many suits might be wholly immaterial becomes material in this. And I attempted to do so, and it is no answer to say that the theory may not be supported finally by adequate evidence to sustain it, because that you cannot tell until you get to the end of the case. Step by step each party proposes what is itself irrelevant, but what may, if united by me, form a part of a material web of testimony when the whole is completed. Now, this publication, as is shown already by this witness, took place before, although he could not say that it was the cause of the new basis upon which the contributors and supporters of the pecuniary aid to *The Golden Age* withdrew their further payment under that contribution, and preferred that Mr. Tilton should be the sole responsible owner of that concern, and as to the question, as this witness has also testified, upon their showing that Mr. Tilton wrote this *Life* and the reason he wrote it, and the degree of composition that he furnished to it, in the revision, if you please, of some rough materials that were supplied to him by this lady and her husband. My learned friends have forgotten also that they put in evidence this card of Mrs. Woodhull's in *The World*

dated May 20th, 1871, in which she states, and states with eloquence and with force, and without the doctrines on this subject of free love between the sexes, that she regards as important to the welfare of society and as destined to overthrow the corrupting influences of marriage.

Mr. Fullerton—She gives a definition to the term there, however.

Mr. Evarts—She does, and she put it in; and I say she has done it with eloquence as well; and those are the doctrines which this witness has testified she avowed in the lecture and which he says are what the public popularly regard as the doctrines of free love. Now, the philosophy, the morality, the utility and the promise of improvement of society in respect to those doctrines, or their opposite, we don't at present discuss. It is a plain practical matter whether in the present state of feeling in this wide community of ours, of this country, the connection of an editor of the importance and credit of Mr. Tilton had heretofore had in connection with which his publications and newspapers did or did not furnish the occasion, and was the operative cause of the destruction of his prosperity. My learned friend means to argue from the proof that its date is wrong, and as it is caused by another adequate reason in which he implies, doubtless, from the relation of Mr. Beecher, the very subject of this dispute. Very well. That is legitimate for him. My point is to have the proofs in. He may argue, and I may argue, in support of the various propositions that we rightfully present to your Honor and to the jury, upon evidence justly proved under the rules of evidence for that purpose. Now, in regard to the identification.

#### THE WOODHULL BIOGRAPHY EXCLUDED.

Judge Neilson—I assume it as identified.

Mr. Evarts—Yes, Sir. I suppose it is not necessary for me to say anything with regard to that. That is all that it is necessary for me to say.

Judge Neilson—Still regarding it as the life of Mrs. Woodhull, I think it is not evidence before us, and I shall therefore exclude it.

Mr. Evarts—Does your Honor recall, what I have already alluded to—the testimony of this witness concerning it being written by Theodore Tilton and the manner in which he wrote it?

Judge Neilson—He said a draft had been prepared by her husband and he revised it and re-wrote it and put his name to it.

Mr. Evarts—We propose to put that very thing concerning which he testified in evidence.

Mr. Beach—That they brought out on their cross-examination. They cannot get in evidence in that way.

Mr. Evarts—How much it will turn out, on further explanation, that Mr. Tilton contributed to the authorship—how much he received from others, why, that of course we cannot anticipate now.

Judge Neilson—I cannot conceive how the biography of this lady, assuming that it represents her life truly or untruly, is material to us.

Mr. Evarts—That we agree to. It is only on Mr. Tilton's presentation of it that we consider it pertinent.

Judge Neilson—Suppose he had written the life of Mr. Bowen.

Mr. Evarts—It might or not be evidence according to whether, as an act of his, it was evidence. We all agree that the biography of this lady is not a matter in itself at issue here; but the connection of this party, Mr. Tilton, as the specific author of that biography, is the point of view in which we offer it.

Judge Neilson—I shall have to exclude it.

Mr. Evarts—Will your Honor be so good as to note our exception?

Judge Neilson—Yes, Sir.

#### THE CROSS-EXAMINATION RESUMED.

Mr. Tracy—Do you remember what was known as the Woodhull scandal: I think it has been referred to once or twice during the examination? A. Yes, Sir, it has been referred to.

Q. That was published on the 28th of October, 1872, I believe, A. I don't recollect distinctly now the date. It was some time in October or November—the early part of November, 1872.

Q. From the date of the tripartite agreement down to the publication of that scandal, what had been Mr. Tilton's occupation, as a whole? What had he been employed at during the Summer? A. I think on the paper, if I recollect right.

Q. On *The Golden Age*? Yes, I think so.

Q. Had he not also been engaged in the political campaign that year? A. The almanacs are running wild in my head. Yes, he had been on the political campaign, I believe, for Mr. Greeley.

Q. He went, soon after the tripartite agreement, to Cincinnati? A. I don't remember when he went to Cincinnati; at the time of the Convention, whatever date that was.

Q. Nothing occurred of importance between these parties, that you recollect, during the Summer of 1872? A. No, Sir; I think not; nothing that I know of.

Q. There was a term of quiet and peace? A. Is that a question?

Q. Yes, Sir; was there not? A. Mr. Tilton was away and Mr. Beecher was here.

Q. You recall nothing about it? A. No, Sir; I don't recall anything.

Q. After the Woodhull publication, I understand you to say that you had frequent interviews with Mr. Bowen? A. Yes, Sir, I did.

Q. On the subject of what answer should be made to him? A. Yes, Sir.

Q. I understand you also to say that you advised silence? A. Yes, Sir.

Mr. Evarts—That paper, if your Honor please, was brought into evidence by your learned friends in the way of testimony concerning it; and, as we understand it, they are to produce and put it in evidence.

Mr. Fullerton—I do not know how the gentleman came to understand that.

Mr. Evarts—By the testimony, if you want to look at it, that



you, when being allowed to talk concerning it, were so allowed upon the ground that you were going to produce it in proof.

Mr. Fullerton—I don't recall anything of that kind in the evidence—anything from which a promise could be implied.

Judge Neilson—No promise; we had general evidence on the subject.

Mr. Evarts—Well, we'll see. [Reading from testimony of Jan. 14.]

Q. Well, I want to ask you whether in this article published by Mrs. Woodhull, illicit intercourse between Mr. Beecher and Mrs. Tilton was charged?

Mr. Evarts—Oh! the article should be produced.

Mr. Fullerton—Well, if you want the article—

Mr. Evarts—We don't want the article.

Mr. Fullerton—You can have the whole of it in, or have that part in. I propose to leave it out if you will admit an answer to that question, and pay no further attention to it.

Mr. Evarts—I cannot agree to any substitute for evidence.

Mr. Fullerton—I propose to give that in evidence, Sir; whether that was charged in that paper. It is not necessary that we should produce it here.

Judge Neilson—Does the learned counsel stand upon the objection that the paper would best show it?

Mr. Evarts—Yes, Sir.

Judge Neilson—Then you cannot do it. You must produce the paper; if you produce the paper, and identify it, you can eliminate that one sentence.

Mr. Fullerton—Well, Sir, we will go on then with the evidence, and introduce the paper to-morrow.

Judge Neilson—Which he didn't do.

Mr. Evarts—It was overlooked, of course.

Mr. Fullerton—Now, he calls upon me to produce it.

Mr. Evarts—Now, it is in evidence; it is regarded, by arrangement between counsel, as if it were in evidence, or else the further examination would not have been allowed to go on.

Judge Neilson—In other words, they wished to show a certain clause in it; and it was ruled they could not do that without producing the paper, and counsel might have thought he would have to refer to the subject, and did not do it.

Mr. Evarts—We called upon them, and we say to them to put it in evidence.

Judge Neilson—[To plaintiff's counsel]—Have you got the paper?

Mr. Fullerton—No, Sir.

Judge Neilson—How anything this woman could say, could possibly affect the issue here, I cannot conceive.

Mr. Evarts—It is a subject of concealment with Mr. Beecher. That article is the basis of voluminous testimony on the part of this witness as to what took place between him and Mr. Beecher concerning it. It is one of the charges against Beecher—his action towards the suppression of what this article charged—as evidence of his guilt in concealing it. Now, the best evidence, as I then insisted as to what the article did charge, was that the article should be produced; and your Honor so ruled, and the counsel said he would produce it “to-morrow.” It passed over.

Mr. Fullerton—If I had produced it as I promised, it would have been evidence only of the fact that there was such a charge in the paper.

Mr. Evarts—That is all.

Mr. Beach—There was no effort to produce it.

Mr. Fullerton—No, not at all.

Mr. Beach—It was only an avowal of the purpose, that the plaintiff would feel bound to abide by it, if we chose.

Mr. Evarts—You went on with the examination of the paper.

Mr. Beach—Not as to that.

Judge Neilson—Not as to the contents of it.

Mr. Evarts—Your Honor sees my learned friend is quoted right, that that article don't prove its truth, but the article proves the charge it makes and don't prove any other charges; and the way to prove the charges it makes is to read the article; and then the existence of these articles and their communication to Mr. Beecher, affect him with a knowledge of them; and then comes the statements of suppression.

Judge Neilson—Or answering.

Mr. Evarts—Or answering; and the argument is that Mr. Beecher is guilty, because he wanted to suppress it or aid in suppressing it. Let us see what it was.

Judge Neilson—I think you are right. [To the plaintiff's counsel.] Gentlemen, do you produce the paper?

I do not now; I have not got it.

Judge Neilson—Counsel calls for it.

Mr. Beach—If we have not got the paper, that is an answer to it. They do not trace it to our possession.

Mr. Morris—We have not got it, and never had it.

Mr. Evarts—Counsel say, in the conduct of their cause, “Well, we will produce it.” Now, if they say they have not been able to find it, and didn't have it—

Judge Neilson—Is that paper in print anywhere in any of the documents?

Mr. Evarts—It is for these gentlemen to say. They said they would produce it to-morrow.

Mr. Fullerton—Yes, Sir, I think I have seen a copy of it in the hands of my learned friends to-day.

Judge Neilson—Why not admit that, and let it pass? Why not accept that as if it were the original? Would it not save time?

Mr. Evarts—Your Honor will remember there was a long cross-examination of the witness as to whether he had furnished the information.

Judge Neilson—I think in as much as they refer to the article, and the conversation with Mr. Beecher was given in respect to it, and the advice about answering or suppressing was the subject of discussion and consideration, you therefore have the right to produce the article and see what it was.

Mr. Beach—We did not refer to the article. We referred to a precise and definite subject—a charge in the article.

Judge Neilson—Supposed to be embraced in the paper?

Mr. Beach—Yes, Sir; it is embraced in the paper, but I understood your Honor to say, in consequence of that reference to that publication, we were under obligations to produce and give in evidence the whole article, or that it was admissible on the one side, or the other. Now, as I am informed in regard to that article, it contains a good deal of extraneous matter, not bearing upon that question of the particular accusation, which was considered detrimental, and which it was the purpose of the parties to avoid or suppress, and therefore I hope your Honor

will look at the article before you shall rule that the whole of it can be introduced.

Judge Neilson—I think they should be allowed to produce so much of it as will enable us to consider the evidence which has been given.

Mr. Beach—That we have no objection to.

Judge Neilson—Counsel will exercise his judgment on that subject.

Mr. Evarts—My learned friend must produce that article. Your Honor continues as follows [reading]:

Judge Neilson—Then you cannot do it. You must produce the paper; if you produce the paper, and identify it, you can eliminate that one sentence.

Mr. Fullerton—Well, Sir, we will go on then with the evidence, and introduce the paper to-morrow.

Q. I want to ask you what reply Mr. Beecher made, if anything, when you informed him that you had denied flatly to two or three persons that he was an impure man? A. He thanked me for the pains I had taken.

Q. Now, during these interviews between you and Mr. Beecher with reference to that publication, where was Mr. Tilton? A. Mr. Tilton, I believe, in the beginning was in New-Hampshire.

Q. And when he returned did he participate in any way? A. Yes; he was present at an interview between Mr. Beecher and myself.

Q. What took place at that interview? A. Mr. Tilton said to Mr. Beecher that he was not at all responsible for that story. Mr. Beecher said he did not believe he was. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. Mr. Beecher told him he did not see exactly how to meet it, at that interview—that is what was said there. I told Mr. Tilton that I thought it was best to be silent, not to attempt any reply to the story.

Judge Neilson—And you must be allowed to know what story it was.

Mr. Evarts [reading]:

Mr. Beecher said he did not believe he was. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. Mr. Beecher told him he did not see exactly how to meet it, at that interview—that is what was said there. I told Mr. Tilton that I thought it was best to be silent, not to attempt any reply to the story. That is the substance of what occurred there.

Then they went on to talk about a card which was proposed as an answer to this paper, and all this course of examination that I have read would have been excluded upon your Honor's ruling and my objection, but for the statement that they were going to produce the paper as a part of their evidence.

Mr. Morris—That is a mistake.

Mr. Evarts—I have read it.

Mr. Morris—No doubt, but your statement is incorrect.

Mr. Beach—The gentleman misapprehends, and, I think, misconstrues the evidence.

Judge Neilson—The only point is whether you can find and produce the paper, under the obligation that it is to be put in evidence, and whether you are not bound to put the paper in evidence in view of the special circumstances—can supply the paper and put it in itself.

Mr. Beach—The precise question presented by the counsel is that we assumed an obligation to put in evidence the paper.

Mr. Evarts—I did, and that the examination went on only upon that examination.

Mr. Beach—And I assert that every particle of that examination is admissible in evidence in the absence of the paper, and without producing it.

Mr. Morris—And the specific question was abandoned upon which that understanding was had.

Judge Neilson—Having given all that evidence in respect to the paper after producing it, assuming you could do so, not having given the contents, they are at liberty to produce the paper and show it contained no charges, but, on the contrary, is a mere advertisement of a house for sale.

Mr. Beach—Oh! certainly, that I accede to, if that is your Honor's view.

Judge Neilson—Then it is a mere matter of form whether you read it or they, under the circumstances.

Mr. Evarts—It is by no means a matter of form, if your Honor please. It is a part of their proofs. Not one word was allowed to proceed by your Honor, in that inquiry which I read to you, except upon the statement of the counsel that they would produce the paper, and it went on, therefore, as if the paper were here.

Judge Neilson—Assuming any way they cannot produce it.

Mr. Evarts—I have not any such evidence. I must have some affidavit of that.

Mr. Morris—Well, make your affidavits: we don't want to make any.

Mr. Evarts—I don't know about this. We were very yielding about it, and said "Very well, if you are going to produce the paper, go on," and they go on, and make all the inquiries after your Honor had closed their mouths, except upon the paper being produced. They talked —

Judge Neilson—As to the contents.

Mr. Evarts—Talked about that story, it being the subject that Mr. Beecher talked about.

Judge Neilson—That requires an answer in some form, that we should know what it was.

Mr. Evarts—You can not say what it was.

Judge Neilson—I give you liberty to read that, on your assurance to read it from the printed paper, they declining to read it.

Mr. Evarts—I shall read it as their evidence.

Mr. Beach—No, Sir.

Mr. Fullerton—No, you won't.

Mr. Evarts—You will object, I suppose.

Mr. Fullerton—We don't require any assistance from the other side at all in producing our evidence; we will try to take care of that matter ourselves. If that is to be read on our side, I want to say something about it.

Mr. Beach—I don't want any misapprehension in regard to this. I repeat the gentleman's inception of attitude of this question, as arising upon the evidence, is under an entire misapprehension—unintentional, of course—and an entire misrepresentation of the manner in which this question arose before your Honor. You must allow me to read a little:

Q. Now, what occurred upon that publication? A. I saw Mr. Beecher shortly after the publication.

Q. State what occurred between you? A. Mr. Beecher said



that he had come to consult with me as to what it was best to do with reference to that publication; what reply could be made to it, if any reply could be made. He said he saw no hope for him since that story had been published. I told him that I thought silence would kill that story; and that if he kept silent with regard to it, simply pointing to his past life as an answer to it, and saying that if that was not an answer he did not choose to make any; that it would kill that story, in my opinion, so far as any evil effects of it upon him was concerned. We consulted frequently concerning it, and did not arrive at any other conclusion than that silence was best. I said to Mr. Beecher, 'If I say anything about it I think this will be the best thing for me to say uniformly; that if the story is true, it was infamous to tell; and if it was false, it was diabolical to have told it; and that if his life was not an answer to it I could not choose to make any—I should not choose to make any to anybody.' Mr. Beecher said to me that he thought it would be judicious for me to make such a reply as that; and I met him after this conversation, and I told him that I had made such a reply as that to several parties, and it appeared to satisfy them. I told him that I had been pressed close by one or two people, and I had denied that he was an impure man—had denied that outright, I did.

Q. Well, I want to ask you whether in this article published by Mrs. Woodhull, illicit intercourse between Mr. Beecher and Mrs. Tilton was charged?

Now, that raised Mr. Evarts to an objection that they wanted the paper, but all that preceded that, in regard to the interview between this witness and Mr. Beecher, was entirely competent and proper in the absence of the article itself. It was the declaration of Mr. Beecher, in that conversation, that characterized it, by asserting the probable effect it would produce. Then, sir, Mr. Evarts says the article should be produced:

Mr. Fullerton—Well, if you want the article—

Mr. Evarts—We don't want the article.

Yet the counsel says we undertook to produce it to them, and are bound now to produce it when they disclaimed all desire for the article. [Reading]—

Mr. Fullerton—You can have the whole of it in, or have that part in. I propose to leave it out if you will admit an answer to that question, and pay no further attention to it.

Mr. Evarts—I cannot agree to any substitute for evidence.

Mr. Fullerton—I propose to give that in evidence, Sir; whether that was charged in that paper. It is not necessary that we should produce it here.

Judge Neilson—Does the learned counsel stand upon the objection that the paper would best show?

Mr. Evarts—Yes, Sir.

Judge Neilson—Then you cannot do it. You must produce the paper.

Then Mr. Fullerton says "we must go on with the evidence." What was the precise question before your Honor? That which was put by Mr. Fullerton whether the particular matter he drew attention to was published in that article. The objection was to that evidence. Mr. Fullerton then says, "I will go on with the evidence," and he did go on with their evidence, not as to what the article contained, but as to the transactions between this witness and Mr. Beecher in regard to it, which were entirely competent in the absence of the article.

Judge Neilson—Still it is not to be denied, in view of that evidence, that they would have a right to put it in.

Mr. Beach—I did not object to that, but when this gentleman (Mr. Evarts) rises and says he reads this as our evidence, and asserts that we assumed an obligation, legal or honorable, to

produce that paper, I deny it, and the whole effort of the gentleman is to throw upon us the theory of producing this article, or this extract from the article.

Mr. Evarts—That I argue, to hold you to your promise. This is my purpose.

Judge Neilson—You can read the article.

Mr. Beach—Will you permit me to say to the counsel that I think I have the support of an objection to this question, and while it is always a very great delight to me to listen to the gentleman, it is difficult for me to reply to him, and I do not want to be called upon to reply to another argument except as a matter of courtesy.

Mr. Evarts—Now, I will make a proposition of my own. I have read to your Honor this evidence which followed what my learned friend has said. When I said, "We don't want the article," I meant to say, "We are not putting in proof here; if you continue to put in that proof here, we want the article you were after putting in proof." Now, Sir, as I understand, this plaintiff and his counsel refuse to produce that paper according to that promise, I move to strike out every particle of this witness's evidence that relates to the subject of the Woodhull scandal, from beginning to end.

Mr. Beach—In other words, if your Honor please, when we prove, upon an allusion made to that article, the declaration of Mr. Beecher—"that will ruin me"—and when he enters into devices with this witness for the purpose of avoiding that ruinous effect upon himself, that must be stricken out unless we produce that paper.

Mr. Evarts—That was my motion.

Judge Neilson—I could not grant that motion without selecting the particular passages which, perhaps, in the paper ought to be stricken out; but, under all the circumstances, regarding this as a misapprehension, the paper will be regarded as before the Court; and you (Mr. Evarts) can read it; and, if they do not produce it, then you can read it from the printed paper.

Mr. Fullerton—I hope your Honor will draw a distinction between the article in the paper and that part of it to which reference was made by me in this examination.

Judge Neilson—Yes, Sir.

Mr. Fullerton—It don't follow that a volume shall come in evidence because a paragraph was alluded to.

Judge Neilson—Well, he will first read that paragraph that points to your evidence; and he shall exercise his judgment in regard to reading the whole of it.

Mr. Evarts—We shall read all that which relates to your story of Mr. Beecher, in regard to the conversation.

Mr. Fullerton—You propose to do it! I don't understand the counsel on the other side shall determine what he shall do.

Mr. Evarts—Of course.

Judge Neilson—As the paper was referred to—a story was referred to—he may read so much of it as covers those two considerations. I think it would be very pleasant to hear that before we adjourn.

Mr. Evarts—If your Honor please, I am reminded by some of the jurors that their hour of adjournment has arrived.

Judge Neilson—[To the jurors.] The jury will return at a quarter after two o'clock punctually.

Mr. Mallison (the Clerk)—The Court will now take a recess until fifteen minutes after two o'clock.

MOULTON'S INTERVIEWS WITH WOODHULL.

The Court met at 2:15 pursuant to adjournment.

Francis D. Moulton was recalled, and the cross-examination resumed.

Mr. Tracy—Do you know when it was that you had your first interview with Mr. Beecher, after the publication of the Woodhull scandal? A. Not precisely the date, Sir, no; shortly after.

Q. Can you tell about how long? A. I don't remember.

Q. Whether it was a week or a month, or two weeks or ten days? A. It was not a month, Sir, I think.

Q. Was it two weeks? A. I had an interview with him I think preceding the interview that I had between Tilton and Mr. Beecher and myself.

Q. Of which you have spoken? A. Yes, Sir.

Q. Can you state with any definiteness when you had your first interview? A. I cannot state precisely, Sir; no.

Q. Was it the same day that the scandal was first published? A. I don't remember that. It was after the scandal was published.

Q. I know; now, was it a week or ten days or what? A. Mr. Tracy, I would tell you if I recollected, but I don't.

Q. Can't you approximate within a time—from one to two weeks? A. I think it was within a week. I don't remember the day that it appeared.

Q. Can you fix the time when the interview to which you have referred on your direct examination as occurring at your house, between yourself and Tilton and Beecher—can you tell when that was? A. It was on election day, I think, Sir.

Q. Between yourself and Beecher and Mr. Tilton? A. Yes, Sir, I think it was on election day.

Q. Did I understand you to say that at that interview Mr. Tilton had a statement written and which he asked Mr. Beecher if he could stand that he could stand anything? A. Oh! no.

Q. That is another. Now I read an extract from what is known as the Woodhull scandal. "My friend"—meaning you, for they have used your name before—"My friend took a pistol"—

Mr. Beach—One moment, Sir.

Mr. Tracy—Well, I read the passage. "My friend took the pistol."

Mr. Beach—One moment, Sir. I do not think that it should be asserted that the gentleman reads from what is called the Woodhull scandal.

Mr. Tracy—The paper is before the Court. The Court will take judicial notice whether it is or not.

Judge Neilson—The gentlemen can say whether they know that is the paper. If they do, I think we can take that to save time.

Mr. Evarts—Mr. Morris, just look at that newspaper and see.

Mr. Morris—Well, I cannot tell.

Mr. Evarts—Well, then we will go on. They say they cannot tell anything about it.

Mr. Fullerton—No; we don't say that.

Mr. Evarts—We read from *Woodhull and Claflin's Weekly* of

May 17, 1873, a paper which is a republication of the issue of that date, of the publication of November, 1872.

Mr. Shearman—I have here the original paper of November 2d, 1872, although it is a little more convenient to read from the other one.

Mr. Evarts—"New York, December 2d, 1872."

Mr. Shearman—That is the original paper.

Judge Neilson—There seems to be no doubt about that.

Mr. Evarts—This is more convenient to take to the witness, I suppose. This purports to be a republication of the whole article. It is not resumé of any kind.

Mr. Tracy—I begin to read the extract again: "I went to him and stated the case fully. We were both members of Plymouth Church. My friend took a pistol and went to Mr. Beecher, and demanded the letter of Mrs. Tilton's under penalty of instant death." [To the witness.] Did you do that? A. Did I do what, Sir?

Q. What is stated—what I just read? A. Demanding—

Q. Yes; is that statement true?

Mr. Morris—Is that to be gone over again?

Mr. Fullerton—That very question was put to him.

Judge Neilson—He has given all the particulars; I think you can ask him this question, though, although he has sworn that it is not so.

Mr. Morris—Yes, Sir; he has been asked the very question.

Mr. Tracy—I did not understand your Honor.

Judge Neilson—He has gone over that ground fully and particularly, and given us word for word all about it.

Mr. Evarts—We will see, if your Honor please.

Mr. Tracy—He has said that he never had any such transaction. Now, I am reading from the paper itself, and asking him if it is true.

Judge Neilson—What I mean to say is this, that he has stated that interview circumstantially and in detail, the conversation, the circumstance of the pistol, and how he recollects it.

Mr. Evarts—We do not propose to renew that.

Mr. Morris—And beyond that, he denies that very fact in his testimony. He has been asked in regard to that very fact.

Mr. Evarts—We do not propose to renew that matter. We have now got the paper before him, and we read that statement from the paper as it is, and ask him if it is true.

Judge Neilson—Well, I say I think we can ask him that.

Mr. Beach—No, Sir. The peculiarity of this proceeding on the part of the counsel is that they do not ask the witness simply whether that fact is true, but they are attempting to draw in this paper, this publication, by assuming to read from the publication—from the paper of Woodhull & Claflin.

Mr. Evarts—Precisely.

Mr. Beach—Now, Sir, we do not want our silence to be assumed as approving that statement of the counsel.

Judge Neilson—The form of the question is unnecessarily hostile. This witness should be treated as every other witness, and there may be witnesses about whom I shall have a good deal of solicitude. It is a question that bristles with hostility. Can't you put it in a different form?

Mr. Tracy—I don't know how I can put it in a different form, except to read the extract and ask him if it is true.



Mr. Beach—I object to their reading the extract from anything.

Judge Neilson—You can ask him if he did that.

Mr. Fullerton—That they have asked him.

Mr. Beach—Let them ask it again.

Mr. Tracy—I ask then, witness, if you did what is there stated?

Mr. Morris—We object to that. You may ask what he did, but what is there stated I don't care anything about.

Mr. Beach—The counsel does not follow the instructions of your Honor in putting the question.

Judge Neilson—He gave us to understand that he could not.

Mr. Morris—Well, he can.

Judge Neilson—I do not think on a cross-examination he is bound by the simple form of asking what he did, because he has told that on the direct.

Mr. Morris—He may ask if he did so and so, not what is there stated.

Mr. Evarts—That is exactly what we are asking, if he did what is there stated?

Mr. Fullerton—How does it appear that it is there stated?

Mr. Evarts—We have just read it.

Mr. Fullerton—You have no right to read it. It is not in evidence.

Mr. Evarts—Yes, your Honor has said that it is before the Court.

Mr. Fullerton—Who brings it before the Court? We have it before the Court, it is true, but it is not in evidence.

Judge Neilson—One at a time, gentlemen. The paper is brought before the Court under very peculiar circumstances owing to the evidence that has been received and some misapprehension as to the duty of putting it in, and therefore it was that I thought it proper to regard it as before the Court and allow them to read it.

Mr. Fullerton—Now, if your Honor please, let us have a proper understanding in regard to it.

Judge Neilson—That is just the point.

Mr. Fullerton—Can it be pretended by the other side that they can put the whole of that publication in evidence because a specific charge in it was alluded to in the direct examination of the witness a few days since.

Judge Neilson—No.

Mr. Fullerton—That being so, let us proceed a step further then. This part that they now pretend to read is not in evidence under that ruling. If anything is in evidence which is contained in that paper it is the charge against Mr. Beecher, and that alone, and now they do not propose to read that charge against Mr. Beecher, but they propose to read something else, which something else is not in evidence, because the whole paper, as a production, is not in evidence. It is very clear, Sir, it seems to me.

Judge Neilson—Then the orderly way, you think, would be for them to read first, under this permission given, what is supposed to be applicable, and then to interrogate the witness.

Mr. Fullerton—They should read that which is within your Honor's ruling, whatever that may be, and nothing beyond it, because there is nothing plainer than a single paragraph having

been read from a paper it does not follow that the whole production is in evidence.

Mr. Morris—That question was not answered.

Mr. Fullerton—I know it was not answered.

Judge Neilson—What constrained the Court to let in that paper was the suggestion that it revealed the scandal and contained a story, which story had been referred to by the witness in his previous examination.

Mr. Fullerton—The question put to the witness was whether in that production there was a charge of illicit intercourse on the part of Mr. Beecher with a lady therein named. That was the question?

Mr. Evarts—By us?

Mr. Fullerton—No, by us.

Mr. Evarts—We are not putting your question over again.

Mr. Fullerton—I know it, but I am, for the purpose of illustrating my argument.

Judge Neilson—I propose that you read such part of the paper as you deem material, and then interrogate him.

Mr. Fullerton—Such part of the paper as *they* deem material?

Judge Neilson—Well, within the sense that we are acting, as to the story and the charge.

Mr. Fullerton—The charge against Mr. Beecher?

Mr. Evarts—As to the story that this witness has spoken of as the subject of conversation between him and Mr. Beecher.

Judge Neilson—Yes, Sir; now, read such part of it as you understand covers that.

Mr. Fullerton—I supposed Sir, that they were to read such parts as the Court understands cover it.

Judge Neilson—I say the story and the charge.

Mr. Fullerton—Your Honor's understanding and my friends' understanding on the other side would be two things.

Mr. Evarts—How are we to come together?

Mr. Beach—I ask that you submit to us what you propose to read.

Judge Neilson—Yes, that, I think, would be a wise step.

Mr. Tracy—I propose to read: "I had one friend"—*that* [handing the paper to Mr. Beach.]

Judge Neilson—Well, proceed and read it, gentlemen.

Mr. Beach—I think it more proper, Sir, that your Honor should look at this than I should. I have marked, Sir, the point.

Judge Neilson—Have you marked the point that they propose to read?

Mr. Beach—Yes, Sir.

Mr. Evarts—It is Mr. Beach's marking.

Mr. Beach—What? Mr. Beach's marking? It is marked under the direction of Mr. Tracy.

Mr. Evarts—Well, I say—

Mr. Beach—It purports to be an interview between a reporter and Mrs. Woodhull, commencing *there* and ending the third page from *there*, [indicating the portion referred to], and I object to it as incompetent and immaterial.

Judge Neilson—Mr. Tracy, you have it before you; what part do you propose to read?

Mr. Tracy—The part beginning with "Reporter."

Judge Neilson—On the second page?

Mr. Tracy—I don't know what page it is on.

Judge Neilson—Well, the second page in this book. Down to what point?

Mr. Tracy—Down to the end of that interview.

Mr. Beach—The third page from that.

Judge Neilson—including the letter of a third person here?

Mr. Beach—including everything, Sir.

Mr. Tracy—We don't care about the third person's name, your Honor. It will take some little time to go over that and select out, perhaps, the names of third parties. We want the story simply as it relates to Mr. Beecher and the witness and Mr. Tilton, as told there.

Mr. Evarts—We want what formed the basis of the conversation, which this witness has detailed, between him and Mr. Beecher.

Mr. Beach—The difficulty is to ascertain what that is.

Judge Neilson—That is the difficulty. Here is a reference in the third column of the fourth page—a reference to Mrs. Tilton. I cannot conceive that any evidence we have had would justify the reading of that. I cannot conceive that it is material, what this writer says about Mrs. Tilton. That was not the subject of discussion between the witness and the defendant.

Mr. Tracy—It will take so long, your Honor, to go over that and pick out the different paragraphs, perhaps, that relate strictly to the parties here, that I had better move to another part of the cross-examination, and renew this.

Judge Neilson—I think so, and mark the specific passages, in brief.

Mr. Tracy—My plan of examination was to read now the paragraphs that related strictly to the parties and to this witness. I did not propose to read anything that did not relate to their witness, and finish my cross-examination of him on that subject, and then at our leisure put in such parts of the paper as we desired to have in. That was the plan that I originally marked out for myself.

Judge Neilson—Haven't you the examination of the witness before you already on these very points?

Mr. Evarts—Not with this paper before us. We can proceed with something else.

Judge Neilson—Well, supposing you do that.

Mr. Tracy—That is the way I originally proposed to do it.

Judge Neilson—Proceed to some other subject and dissect this at your leisure.

#### MOULTON'S LOANS TO TILTON.

Mr. Tracy—We can renew this just as well.

Judge Neilson—And use as little of it as you can help. It is like medicine. Don't take too much of it; it is unpleasant. [Laughter.] Go on, Mr. Tracy.

Mr. Fullerton—We object that the medicine don't suit the disease at all.

Mr. Tracy—That you can only tell by trying. That is the way the doctors do.

Mr. Fullerton—That is the way lawyers do sometimes; but I guess doctors don't, who understand themselves.

Mr. Tracy—Now, Mr. Moulton, will you tell us what source of revenue Mr. Tilton had, to your knowledge, from January 1st, 1871, down to May 1st, 1874? A. What source of revenue?

Q. What source or sources of revenue he had, to your knowledge, from January 1st, 1871, to May 1st, 1874? A. He had on deposit with Woodruff & Robinson some money, Sir. He had the subscriptions to *The Golden Age*, and he had—when I speak of subscriptions, I mean to the capital stock of *The Golden Age*.

Mr. Evarts—Contributions? A. Yes, Sir; contributions, that is a better word; and then the subscriptions to *The Golden Age*, an income from the paper, Sir, and he had also \$7,000 from Mr. Bowen; and from May 3d, 1873, I think that was the date, May 3d, 1873, or May 2d, 1873, the \$5,000 which he didn't know anything about, however.

Mr. Beach—He is giving the capital instead of sources of revenue.

Mr. Tracy—He is not giving the sources of income. I move that the last answer of the witness be stricken out.

Judge Neilson—The words "he did not know anything about it" are stricken out.

Mr. Tracy—That \$5,000—you refer to the \$5,000 which came from Mr. Beecher? A. I refer to the \$5,000 that Mr. Beecher gave to me for him; yes, Sir.

Q. Have you named now all the sources of revenue that he had, to your knowledge? A. I don't know whether the book, Sir, was issued—"Tempest Tossed" was issued before May 1st 1874, or not—whether he had finished it.

Q. Well, do you know whether he had received any income from it before May 1st, 1874. A. I don't know whether he had received any income from that or not.

Q. Do you know whether he received any income from *The Golden Age*, or whether it failed to pay expenses? A. I don't know that of my own knowledge, Sir.

Q. Have you now named all the sources of income that Mr. Tilton had, to your knowledge? A. Of income—I think I have; yes, Sir.

Q. Does that include borrowed money? A. From me?

Q. From anybody? Does it include your borrowed money that you loaned him? A. I don't know; I have not mentioned that, Sir; there was not so much of that, I find.

Q. In addition to what you have mentioned, were your loans to him? A. Yes, Sir.

Q. Had he any other source of income to your knowledge? A. Not that I know of.

Q. No other loans? A. From anybody else?

Q. Yes, Sir. A. Not that I know of.

Q. No other funds applied to the support of *The Golden Age*? A. None that I know of.

Q. What amount of income did he receive from your loans? A. I have had it examined, Sir, and I cannot determine that. I had our accountant—I told Mr. Porter that I would have him look over the books, but there is nothing by which I could be guided, Sir.

Q. Have you brought your books here? A. No, I have not brought the books here.

Q. I thought you were to bring the books here of Woodruff & Robinson. Do you know of his having any income from lec-



tures during that period? A. Yes, he did, I believe, have income from lectures, which I did not recall when I answered your question.

Q. How much? A. I don't know.

Q. What years? A. My impression is that he lectured in the beginning of 1871, Sir, and in the Winter of 1871 and the Spring of 1872; I think so; I won't be certain about that.

Q. Now, do you know whether his lecture seasons did or did not produce any income? A. They did produce some, Sir; I don't know how much.

Q. You do not know how much? A. No.

Q. Now, have you named all? A. I think I have, Sir, as far as I recollect.

Q. Were your firm his bankers during this time? A. He had money on deposit, Sir, with our firm.

Q. Had he any other bank account to your knowledge? A. I don't know that he had.

Q. How did that account stand in April—2d or 5th, is it, when he received and deposited with you \$7,000?

Mr. Fullerton—That appears by the account itself, Sir.

Judge Neilson—There are both accounts there.

The Witness—I cannot state from memory, Sir.

Mr. Tracy—I will show you the account. How often had you loaned him money, should you say, during this time? A. Not very often, Sir.

Q. Loaned it on his application? A. Sometimes I asked him if he wanted any money.

Q. And if he said he did you loaned it to him, did you? A. Yes, Sir; generally.

Q. What amounts have you loaned him?

Mr. Fullerton—That is all gone over, Sir.

Judge Neilson—Yes, Sir; "When he wanted money I gave it to him," he said, "and generally in currency."

The Witness—Mr. Porter asked me if it exceeded \$5,000, and I answered him no, Mr. Tracy.

Q. Mr. Tracy—In the aggregate? A. Yes, Sir, he asked me if it exceeded \$5,000 in the aggregate.

Q. Now, I ask you what is the largest amount you loaned him at any one time? A. I don't recollect.

Q. Were these loans independent of your contribution? A. Yes, Sir.

Q. How large is the largest amount you recollect of loaning him at any one time? A. I don't recollect, Sir, anything about it—what was the largest amount.

Q. Do you recollect of loaning him as high as \$500 at any one time?

Mr. Morris—Your Honor, is this to be gone over again? It has all been gone over with particularity.

Mr. Tracy—It has been gone over just as every other subject has been gone over.

Mr. Fullerton—That is so.

Mr. Tracy—Judge Porter asked one or two questions about the fact whether he had loaned him money.

Judge Neilson—Oh! more than one or two questions; he examined him as much I think as in his judgment the point called for.

Mr. Tracy—Our recollection is that he only asked him as to

the aggregate amount and nothing as to the details. That is our recollection on our side.

Mr. Morris—It is a mistake.

Judge Neilson—He asked him as to loans.

Mr. Tracy—So Judge Porter touched on every point generally.

Judge Neilson—I said you could ask him this question. Perhaps that will satisfy you.

Q. Can you state whether you ever loaned him as high as \$500 at any one time? A. I cannot, Sir; but I can state that I never loaned him to exceed \$500, I think, at any one time.

Q. Will you look at the account, and tell us whether his account with Woodruff & Robinson was overdrawn at the time he received the money from Bowen? A. It would appear from this, Sir, that the account was overdrawn \$564 39.

Q. At the time he received the \$7,000 of Bowen? A. It would appear so from this, Sir.

Q. Now, Sir, from the account when was that \$7,000 exhausted, and the entire amount in your firm's hands belonging to him exhausted?

Mr. Fullerton—I dislike to trouble your Honor with objections, but it does seem to me that this is a waste of time. There are the figures which prove whatever they do prove, and there is no necessity for any one's swearing to them.

Mr. Morris—The account has been read in evidence, Mr. Tracy.

Mr. Tracy—Well, but the balances.

Mr. Morris—Yes, the balances, every item of the account, both sides.

Judge Neilson—You might substitute the word "withdrawn" for "exhausted."

Mr. Tracy—Yes, the stenographer may change the question.

The Witness—Shall I add it up to answer your last question?

Mr. Tracy—Yes, if it will not take too long. Don't it show readily?

The witness—What is the last question, General?

Mr. Tracy—When the whole amount was withdrawn? A. The account seems to be closed on April 21st.

Q. When was the last item withdrawn; when did he draw the last item of that account? A. \$170 48 seems to have been drawn here on April 21st, 1873.

Q. When was the next to the last item drawn? A. December 21st—December 27th, according to this account—\$6.

Q. Now, will you tell us whether that did not withdraw the entire account? A. The account seems to have been balanced on April 21st, 1873.

Q. I ask you to tell us whether, when he drew on the 27th of December, the draft, he had anything remaining, and, if so how much? A. When he drew the draft on the 27th of December?

Q. Yes, Sir? A. I wish Mr. Shearman would add this up; I cannot see; my eyesight is not good enough.

Mr. Evarts—We will verify it.

The Witness—I can hardly see, Sir.

Mr. Tracy—Very well, Sir, pass it back; we will do that. [Taking the account from the witness.]

The Witness—The account is as it stands. I don't know anything about it further than that.

Q. What source of income had Mr. Tilton from January 1st, 1873, to the receipt of the \$5,000 by you from Mr. Beecher in May, 1873? A. I don't know that he had any, Sir, except from *The Golden Age*—whether that paid or not—the receipts from that.

Q. That you don't know? A. No; I don't know.

Q. Did you loan him any money during that time? A. I don't recollect that I did, Sir.

Q. Did any one else contribute any money to him during that time to your knowledge—during that period? A. Not to my knowledge; no, Sir.

Q. You had an interview with Mr. Beecher on the subject of this \$5,000 before you received it from him? A. Yes, Sir.

Q. Do you remember where that interview was? A. Well, there were interviews at my house about it.

Q. You say interviews? A. Yes, Sir.

Q. More than one? A. I think there was more than one; yes, Sir.

Q. Having reference to this \$5,000? A. Having reference to help for *The Golden Age*.

Q. Well, I am talking about the \$5,000 now. A. Yes; I think there was more than one with reference to the \$5,000.

Q. At either of those interviews did you present to Mr. Beecher drafts or checks of any person, saying to him in substance. "This is friendship;" "This is what I call friendship?" A. I don't remember that phraseology, Sir.

Q. Well, did you show him drafts from any person which you had received as a contribution to *The Golden Age*, or to Theodore Tilton, either? A. If you will allow me, Sir, I will tell you as nearly as I recollect what I did show him.

Q. Yes, Sir. A. There was a friend of mine, and of Mr. Tilton, who sent me either a check or two checks, and in addition to it a note, I forget for how much, which the person wanted me to discount and use as I saw fit for *The Golden Age*. I didn't think it was best to do it, and returned it.

Mr. Evarts—What you told Mr. Beecher, not what you thought? A. I told Mr. Beecher that Mr. Tilton would not take that money.

Mr. Tracy—What was the aggregate? A. That I don't remember, Sir.

Q. Don't you remember anything about it? A. No; I don't recollect about it; I have asked about it since to find out.

Judge Neilson—You showed him these papers, did you? A. Yes, Sir, that is all; I don't remember anything about the amount.

Mr. Tracy—Do you remember whether it was as high as \$5,000? A. I don't recollect, Sir.

Q. Do you remember whether it was as high as \$3,000? A. I don't recollect.

Q. Was there more than one draft or check to make up the gross amount? A. I think, Sir, that there were two pieces of paper; I think there was one check and one note.

Q. Whose was it? A. Shall I answer that question, your Honor?

Judge Neilson—It don't seem to be material.

Mr. Evarts—We think it is material, if your Honor please.

Mr. Morris—We object

Mr. Evarts—It is a part of the conversation with Beecher.

Judge Neilson—No name was mentioned.

Mr. Evarts—He does not say that.

Judge Neilson—It does not appear in the evidence that any name was mentioned.

Mr. Evarts—Well, we ask him if it was, and if the name was mentioned to Mr. Beecher?

Mr. Morris—We object.

Mr. Evarts—We infer from the fact that Mr. Tilton said he would not accept it from that source.

Judge Neilson—I do not think the name is material.

Mr. Tracy—We desire to hear all the conversation.

Judge Neilson—You can have all the conversation, and I will allow you to get it. Go on with the examination. I think his name ought not to be mentioned. That is all, I think.

Mr. Tracy—You say you showed Mr. Beecher those drafts? A. Yes, Sir.

Q. Did he see the name? A. I think he did.

Q. Was the name mentioned? A. I think it was.

Judge Neilson—Then you can give it, if it was mentioned in the conversation?

The Witness—Shall I give it, your Honor?

Judge Neilson—Yes, if it was mentioned in the conversation, you can give it.

Mr. Beach—One moment. I was busy and I have not particularly understood this question, but do not think it follows, because immaterial, impertinent, or scandalous or offensive matter may have been mentioned in that conversation which has no connection with the subsequent matter of this controversy, it necessarily comes in evidence. If needful I will send for authorities to satisfy your Honor, that where one party calls for a conversation and it is given, the other party may give the remainder of the conversation, so far as it is material to explain that which has been put in evidence, but it does not make the whole matter which Mr. Beecher may have asserted in that conversation material.

Mr. Evarts—We have not asked him about Mr. Beecher.

Mr. Beach—I don't know what the conversation was, that was particularly referred to. I understand, Sir, that this was a conversation between Tilton, Moulton and Beecher in regard to a contribution.

Judge Neilson—No; Tilton was not present.

Mr. Beach—Moulton and Beecher.

Judge Neilson—Tilton was not present.

Mr. Beach—Tilton was not then present. Well, even if he had been present it would make no difference. A declaration by Mr. Beecher in regard to a third person—

Mr. Evarts—We have not asked for Mr. Beecher's declaration; we are not asking for Mr. Beecher's declaration.

Mr. Beach—What is it you are asking?

Mr. Evarts—We are asking what this witness said to Mr. Beecher.

Mr. Beach—That don't make any difference, Sir, whether it was said by one party or the other; it is totally immaterial.

Judge Neilson—It appears that a third person, acting, perhaps in the interest of *The Golden Age*, sent a check and note, suggesting that the note be discounted and the money applied.



It was not thought wise to discount the note. Those papers were shown to Mr. Beecher, and some conversation had in respect to it. The question was whether the witness did not say to Mr. Beecher, in reference to those papers, "that is friendship indeed," or something of that kind.

Mr. Evarts—Yes, Sir.

Judge Neilson—The whole thing is collateral.

Mr. Beach—That is what I was going to remark.

Judge Neilson—It don't touch the issue we are trying at all, although it may have some bearing upon the other matter, whether Mr. Tilton had any means or not,

Mr. Evarts—We do not regard it as collateral. If your Honor will allow us to state how it comes in.

Judge Neilson—Yes, Sir.

Mr. Evarts—This witness has undertaken to give the interview between him and Mr. Beecher which led to Mr. Beecher's contribution of \$5,000, and the instructions concerning it, all which is adduced here as evidence, in the shape which he has presented it especially, of crimination against Mr. Beecher in that contribution. Now, we propose to show what did pass between this witness and Mr. Beecher antecedent to his payment of the \$5,000, and the witness has told us that there was more than one interview. Now we are getting at those interviews. That is the way it comes in, and we propose to show exactly what did pass between this witness and Mr. Beecher, and then we will see whether the construction that has been put upon it in what has already been given is the true one.

Mr. Beach—The witness has given no construction to it; he has merely related interviews which have been called for by the counsel upon the other side, none of which have been introduced by us on that subject.

Mr. Evarts—In a previous interview. On your own evidence he gave one of the interviews that preceded the \$5,000.

Judge Neilson—Now, you can have all the rest of that interview, if all of the conversation was not given.

Mr. Evarts—We can have the preceding interview also. The *res* to be proved is what passed between this witness and Mr. Beecher that bears upon Mr. Beecher's contribution. It is just as much part of the *res* if it happened in a conversation prior to the one that he has detailed. I submit to your Honor that that is very clear.

Mr. Beach—We have not given an interview, Sir, upon that subject, I mean the subject of contributions to *The Golden Age*, or the revenues of *The Golden Age* and its fortunes in any particular, Sir. We gave in evidence the interview at which Mr. Beecher contributed \$5,000 for some purpose. Now all of that interview relating to the subject concerning which we inquired, of course is evidence. We gave the whole of it, I suppose, so that the gentlemen are satisfied with it.

Judge Neilson—Also a prior interview when it was stated that \$5,000 on mortgage could easily be got.

Mr. Beach—Yes, Sir. Now the proposition is upon their part to prove another interview between Mr. Moulton and Mr. Beecher in regard to a contribution of a third person toward *The Golden Age*, which was rejected.

Mr. Morris—And as to who that person was.

Mr. Beach—That interview is not competent evidence against us. What Moulton and Beecher may have declared in the interview to which we have not directed our attention is competent to be proven against us.

Judge Neilson—Everybody will agree to that. Counsel will agree to that, of course.

Mr. Beach—Well, if they concede that, they concede the principle which excludes all the evidence in regard to this interview.

Judge Neilson—Unless it occurred in one of the interviews as to which you inquired.

Mr. Beach—Certainly; they don't propose that.

Mr. Evarts—Does your Honor say we cannot show interviews between this witness, in reference to this transaction which he undertook to carry on and conduct with Mr. Beecher, and that they can pick out which they please, and we cannot prove the others?

Judge Neilson—I mean to say that when they have inquired into any conversation, you can inquire as to the rest of it.

Mr. Evarts—That we understand.

#### MORE ABOUT THE GOLDEN AGE MONEY.

Judge Neilson—I mean to say, also, that as to this \$5,000 or the raising of it, if Mr. Beecher gave any instructions, you can go into that; as to the person who was appointed to distribute or apply the money—that is, as to the act of a third person. That is before us already. This discussion came up in regard to the name of that third person, which I think is not material. I don't see why it is material.

Mr. Evarts—Yes, your Honor cannot see why it is material until it appears and until the conversation is given. Our difficulty is this, if your Honor please: the witness is sworn to tell the truth, the whole truth, and nothing but the truth, and we undertake to examine him concerning what was actually said and done between him and Mr. Beecher. Now, there is no authority that I know of that can absolve him from telling the truth as it occurred.

Judge Neilson—He don't ask to be absolved, counselor, and it is not necessary to reiterate the form of his oath; of course we know that.

Mr. Evarts—I submit to your Honor's rebuke, but submit that I am not aware of any rule of evidence—

Judge Neilson—It does not follow that because the witness swears to tell the truth, the whole truth, that he is therefore to tell everything.

Mr. Evarts—Everything that is pertinently inquired of.

Judge Neilson—Exactly.

Mr. Evarts—And, therefore, as it was. How can it be predicted, if the interview is pertinent, that this or that should be omitted from it?

Judge Neilson—We really have this interview, excepting the name of a third person.

Mr. Evarts—We haven't the whole of the interview.

Judge Neilson—Well, I think we will take the rest of it; yet I appeal to you whether you think it proper that this third person should be named. If you say, as counsel, that he should be, the witness may name him.

Mr. Evarts—Very well; it establishes the rule of evidence.

Judge Neilson—Suppose it should be one of your learned associates, would you like to have his name brought in here?

Mr. Evarts—Your Honor is assuming that there is something discreditable. There is not that I know of.

Judge Neilson—Well, I am assuming that gentlemen may have private transactions or gifts which they don't wish to have made public.

Mr. Fullerton—Especially if they were rejected.

Judge Neilson—Do you say it is material?

Mr. Evarts—I will consult with my associates. Your Honor sees the difficulty that where we are dealing with material and important interests of people in litigation we cannot, of course, always exercise that degree of courtesy and consideration that we would be glad to do in reference to third persons; that your Honor understands as well as any one of us that have any experience in the profession. Of course, your Honor has had experience both at the bench and at the bar, and I think your Honor knows that the bar never do desire to press inquiries that they do not regard as material; I mean as affecting third persons. We are not satisfied with the condition of the matter as passing between this witness and Mr. Beecher, as it stands now.

Judge Neilson—I purpose to allow you to take the rest of the interview, because so much of it has been given, suggesting to your own consideration the propriety of leaving out the name of that third person.

Mr. Evarts—Well, perhaps we may do that.

Judge Neilson—You can come to an end in that way, you know.

Mr. Fullerton—Well, I don't know about referring the propriety of that course to the counsel upon the other side. If it is improper in your Honor's judgment, then I would respectfully ask that your Honor's judgment should be carried into effect.

Judge Neilson—I generally try to do that.

Mr. Fullerton—I am aware that your Honor generally tries to do that, and that your Honor generally succeeds also; and if it be improper to give the name of the third person, then it ought to be shut out, because it would not make it any less improper that it was referred to counsel on the other side for their judgment in regard to it. Your Honor will perceive this conversation, a part of which they have called out, was not referred to by the witness upon his direct examination. It is not, therefore, within the rule which your Honor has suggested, that where a part of a conversation was called for by ourselves, they have a right to the balance of it. It is not that case.

Judge Neilson—No.

Mr. Fullerton—But it is a question where they call for another conversation upon their own responsibility, and hence it is collateral, and they cannot dispute it hereafter or disprove it hereafter.

Judge Neilson—It is collateral unless it took the form of instruction in regard to the use of this money.

Mr. Fullerton—Well, Sir, it does not take that form. Let us see just how the thing stands: they say, or they prove by Mr. Moulton, that on a certain occasion he received from

some third person, whose name has not been made known, a letter containing a draft and a check, with instructions to use it for the benefit of *The Golden Age*, and that Mr. Tilton said he would not have it used for *The Golden Age*.

Mr. Evarts—He has not said that.

Mr. Fullerton—And he has been asked whether or not he showed these papers to Mr. Beecher, and he says that he did. Then he was further asked, was the name of the person attached to this letter used in that conversation? His answer was in the affirmative, and they call for that name. Now, that is the question before the Court, and can anybody see that that becomes material in this controversy? It is collateral matter, and they cannot contradict it. Even if the name should be given, they could not produce the person for the purpose of showing that it was untrue.

Mr. Evarts—That is not our object.

Mr. Fullerton—It is purely collateral, and therefore they have no right to it. They may have a right to the other part of the conversation inasmuch as a part of it has been given, as your Honor has suggested; but when giving evidence of collateral matter, your Honor has a right to stop them, especially in a question of this kind, where they seek to give the name of a third person who has no earthly connection with this controversy, and who ought not to be drawn into it at all.

Judge Neilson—I think the learned counsel was accepting my suggestion not to exact the name.

Mr. Evarts—There is nothing collateral about this. It is not brought in to impeach the witness—not in the least; it is a part of the direct subject of the inquiry, just as what you gave in evidence was the subject of inquiry.

Mr. Beach—That we deny, your Honor.

Mr. Evarts—I know you deny it; it is not collateral. How a conversation one day is collateral and next day specific, I can not understand.

Judge Neilson—Well, now, you can exact this name. Do you ask him to give the name or not?

Mr. Tracy—Not at present.

The Witness—Shall I give the conversation?

Judge Neilson—Everything except the name of the person who sent the papers.

Mr. Beach—Does your Honor rule that the declarations Mr. Beecher may have made in that conversation as to other matters than the \$500 is admissible?

Mr. Evarts—When we come to that, it will be time enough to consider it.

Judge Neilson—The inquiry relates to the \$5,000.

Mr. Evarts—Of course it does.

Judge Neilson—Meantime you take an exception. Go on, witness.

The Witness—Shall I give the conversation?

Mr. Tracy—Yes; omitting the name.

Judge Neilson—From the point where you dropped it.

Q. You recollect when you left it off; you say that you told Mr. Beecher Mr. Tilton would not accept that money; you said you would not discount that draft; you showed him these papers; now what did you say? Was there a letter accompany-



ing those papers? A. I think there was a letter, Sir, accompanying those papers.

Q. Was there currency also inclosed? A. I don't think there was, Sir.

Q. Now, go on and state what occurred—what was said? A. I said to Mr. Beecher that I had spoken to Mr. Tilton about this gift, and that Mr. Tilton said he could not accept it; that he had no way of returning the money that he knew about; and I said also to Mr. Beecher that I could not honorably take this money from this person and apply it to Mr. Tilton's use without informing him about it, and I did not see how that money could be used therefore. That is the substance of the conversation, Sir, as nearly as I remember it.

Judge Neilson—Now, he asked you whether in that connection you said to Mr. Beecher, in showing him the papers, "This is friendship, indeed," or something of that kind.

Mr. Tracy—Did you make any remark characteristic of the mode of tendering such a fund? A. I think I said something about its being an expression of friendship; yes, Sir.

Q. Can you repeat the language that you used? A. I can't repeat the language that I used; no, Sir.

Q. Wasn't it, in substance, "This is friendship, indeed?" A. No, it was not in that shape.

Q. Repeat the substance of it, as near as you can? A. I have, Sir.

Q. You can't do it? Well, now, was that money received and used, or was it returned? A. No, Sir; it was not—it was not.

Q. No part of it received?

Mr. Fullerton—Just one moment.

Judge Neilson—I think we have gone far enough with that.

Mr. Fullerton—The answer was not full—"Was the money received or was it returned?" His answer is, "It was not."

The Witness—I mean it was not used for *The Golden Age*.

Q. It was not received; was it returned? A. Yes, Sir; I returned it myself.

Q. Had you any talk with Mr. Tilton about it? A. Yes, Sir; I had.

Q. What was it? A. I told him of the offer of this party, the request of this party to let him have this money, and my recollection is that there was a caution in the note itself not to say anything about it—not to say anything about it to Mr. Tilton, but I could not give it to him, in my opinion, without telling him about it, and I told him frankly who the party was and what the amount was, and he said he certainly could not take it; he had no way of returning the money that was loaned to him, or given to him, and he could not do it in that way.

Q. Was the party known to Mr. Tilton? A. Yes, Sir.

Q. Known to Mr. Beecher also? A. Known to Mr. Beecher; yes, Sir.

Q. And a friend of Mr. Tilton. A. A friend of Mr. Tilton; yes, Sir.

Q. Now, do you say that Mr. Tilton said that he had no way of returning it—repaying it—and therefore he could not take it? A. Yes, Sir; he said something substantially like that, Sir.

Q. Was it tendered to him as a loan, or a gift? A. Well; I

think it was intended to be either one or the other: it was to be used for *The Golden Age*.

Q. How did you present it to him—how did you present it to Mr. Tilton; as a loan, or a gift? A. I guess as a gift.

Q. Now, how soon after that was the money received from Mr. Beecher? A. I don't recollect the date of that conversation, Sir; I don't recollect the date of this transaction.

Q. How soon after? About how soon? A. Well, I can tell you the date that the money was received from Mr. Beecher; I cannot tell you how soon after.

Q. I don't care when that was; I want to know what time.

Mr. Evarts—He said this was before.

Question, by Mr. Tracy—How near were they together? A. I don't recollect.

Q. Well, can't you approximate? A. No; I cannot approximate; I don't recollect.

Q. Was there anything said by Mr. Beecher at this time about raising the five thousand dollars himself? A. I don't recollect that there was, at that interview, Sir.

Q. Now, how soon after that did Mr. Beecher come to you and talk about raising five thousand dollars? A. I do not recollect, Sir.

Q. Can you tell whether it was three days or two days, or one week or three weeks? A. No, I cannot.

Q. Cannot tell anything about it? A. No.

Q. Was it a month? A. I do not know.

Q. Was it six months? A. I don't know.

Q. You say you don't know whether it was six months. A. No; I do not know.

Mr. Fullerton—He has said so; and you heard him say so distinctly.

Judge Neilson—Now, I ask the witness, can't you give the date? A. I cannot; I have tried to ascertain the date, your Honor; I saw the reference, your Honor, in the—

Mr. Evarts—It is not a question of date; it's a question of proximity of the transaction, no matter what the dates were.

Judge Neilson—Well, the witness must be allowed to answer.

The Witness—If your Honor pleases, I should like to make this explanation; I saw the notice in Mr. Beecher's statement that this examination has reference to, and I have tried in good faith to find out the amounts and the dates, and I have not been able to.

Q. Can you tell the season of the year when you had this conversation and exhibited these papers? A. No, Sir; I cannot swear what it was.

Q. Can you tell what season of the year it was? A. No, I cannot.

Q. Whether it was Winter or Spring? A. No, I cannot; whether Winter or Spring.

Q. Where was this interview between you and Mr. Beecher? A. I think it was at my house.

Q. Mr. Beecher came to you and spoke about the \$5,000; now, how soon after that interview, where he spoke of the five thousand dollars, did you receive the money from him?

Mr. Beach—Spoke of what five thousand dollars?

Mr. Tracy—Spoke of raising five thousand dollars, I understood him; he has already said that on your examination.

Q. Now, how soon after that was it that you received the money from Mr. Beecher? A. I don't remember that either.

Q. Can't you approximate to the time? A. No; I cannot approximate to the time; it wasn't a very great while.

Q. Was it a week? A. I don't know whether it was a week or not, Sir; it may have been a month.

Q. Well; do you know the time when you received it? A. I know the time when I received it precisely.

Q. On receiving it, what did you do with it? A. Took it over to New York and deposited it with the firm of Woodruff & Robinson, to my credit.

Q. Did you send any part of it to Tilton? A. I think I sent him a thousand dollars—the account will show—on the next day, Sir.

Q. What happened between you and Tilton when you sent him that thousand dollars? A. I sent him the thousand dollars with a demand note, Sir; with a note for him to sign.

Q. In whose favor? A. "On demand I promise to pay to the order of Theodore Tilton," I think the way it was drawn; I think it was; and he returned the money to me, saying that he could not—that he could not borrow any money on demand and give that note for it, because he had no means of answering to that responsibility.

Q. Of repaying? A. Yes, Sir.

Q. Well, what did you do then? A. Then I sent him the check for a thousand dollars as a gift.

Q. What did you do? A. What did I do? I sent him a check for a thousand dollars.

Q. Did you accompany it with a note? A. I don't think I did; don't remember whether I did or not.

Q. Or any note to be given for the thousand dollars? A. No.

Q. No communication accompanied the check? A. I don't recollect that there was.

Q. Well, what became of that? A. He used it, I suppose; I don't know what became of it.

Q. What occurred between you and Mr. Tilton after that about that thousand dollars? A. I do not recollect what did occur.

Q. Anything? A. Not that I recollect of particularly; we may have had some conversation about it; I don't remember what it was.

Q. Didn't Mr. Tilton ever introduce the subject? A. He may have done so.

Q. Did he? A. I do not recollect whether he did or not; I don't recollect any specific interview at which it was done.

Q. Did you ever introduce the subject to him? A. I don't remember whether I ever did or not; very likely I did.

Q. Was it ever the subject of conversation, directly or indirectly, between you and Tilton, so far as you know? A. I think it was; yes, Sir.

Q. Then what was said? A. I will try to recollect the substance of it.

Q. When was the conversation? A. I don't remember how shortly after the giving of the thousand dollars it was; I don't remember how shortly after that or how long after that it was.

Q. Can't you approximate to the time? A. Well, it was not but a few days; I guess not to exceed a few days.

Q. Well, then, what occurred? A. I don't recollect distinctly enough to state, I think, what did occur. There was an allusion made to the fact that I had sent him a note, substantially that for him to sign, and he reiterated what he had said in the note, in reply to the first note that I sent to him, and I said then. "Very well, take this money and you can have the money and return it when you are able to return it;" that is all; that is the substance of what was said; I don't recollect the conversation accurately.

Q. What do you mean by saying, "Take the money?" A. Use it.

Q. Hadn't he used it already? A. I don't know whether he had or not.

Q. You don't know how long this interview was after the sending of the check? A. Oh! it was within a few days, Sir; the natural time of such a conversation. I don't recollect when I saw him after it, Sir; I am trying to answer your question as well as I can.

Q. But you don't know whether he made use of the check at that time or not? A. I really do not.

Q. When did you send him the next amount of money? A. I don't know; the account will show.

Q. I pass you the account? A. It would appear to be, Sir, by this account, July 11th, 1873.

Q. How much? A. \$650.

Q. How came you to send him that? A. I heard, either from him or Mr. Ruland, I don't remember which, that the paper wanted that money or something about his wants; I don't know what.

Q. Was there any note sent with it? A. Don't recollect, Sir; don't know whether there is or not. All the papers I have got with reference to it are produced here under your subpoena.

Q. Have you any note or memorandum written to him at the time of paying over that money, or sending that money? A. I think not, Sir.

Mr. Fullerton—What money? A. \$650.

Mr. Tracy—Have you got any application from either Mr. Ruland or Mr. Tilton for that \$650? A. I don't know, Sir, that I have; all the applications are in the papers here.

Mr. Evarts—We would like them.

Mr. Tracy—We would like all of them.

Mr. Fullerton—All of what?

Mr. Tracy—All the applications from either Tilton or Ruland for this—for money.

Mr. Beach—I don't understand the witness to say that he has any.

Mr. Tracy—Then we want that fact stated, that he has not.

Mr. Evarts—The witness said that there were applications.

Mr. Beach—No; I beg your pardon.

Judge Neilson—He said all the applications, assuming that there might be some, were among the papers. Better pass to some other subject; you only have about an hour to finish your cross-examination. In the meantime, Judge Morris will look.

The Witness—I remember one note, I think, from Mr. Ru-



land, that I put in there, Mr. Tracy; the check is there, Sir, for the \$1,000 that you just called for, if you will look at it.

Mr. Tracy—We would like to put it in. What number will that be?

[Paper marked "D, 27."]

Mr. Morris—Have you got the date of that?

The Witness—This is May 3d. Shall I mark it off here as delivered to the stenographer?

Mr. Morris—Yes, Sir.

Mr. Tracy—Now the second? A. The second is \$650, Sir. That check is also there.

Q. Now, I pass up the application that has been handed us. Will you say whether you have any application from either Ruland or Moulton for the payment of \$650 in July?

Judge Neilson—From either Ruland or Tilton?

Mr. Tracy—Ruland or Tilton, I thank your Honor.

The Witness—I had either a verbal or written communication from either one or the other, but I haven't it here. If this be all that is in the papers, this is all I have got.

Q. Well, you have no written application? A. It appears not —

Mr. Evarts—No application that has been found? A. No, Sir. I have made a diligent search for the papers, and have undertaken to comply with your subpoena, as far as possible.

Mr. Tracy—Is that the letter which accompanied the first offer of the thousand dollars of May 3d [handing paper to witness]? A. Yes, Sir; Mr. Tilton's answer is: "I cannot borrow any money, for I see no way of returning it." That is his answer.

[Paper marked "D, 28."]

Mr. Tracy [reading]:

NEW-YORK, May 3d, 1873.

DEAR THEODORE: I inclose to you check for \$1,000, for which please sign the inclosed.

Yours,

F. D. MOULTON.

Mr. Tracy—Now, was that letter returned to you with the note of Mr. Tilton on it at the time? A. Yes, Sir, precisely; and the check too.

Q. And the check also? A. Yes, Sir.

Mr. Tracy [reading]:

DEAR FRANK: I cannot borrow any money, for I see no way of returning it.

Hastily,

T. T.

The Witness—That is it, Sir. The next check is August 15th. Did you have that, Sir?

Mr. Tracy—Yes. When did you send him the next sum of money? A. July the 11th—I made a mistake in July the 11th.

Q. For how much? A. \$650.

Q. Well, is that the second or third? A. That is the second, Sir, and indorsed by O. W. Ruland, I think, Sir; isn't it? [Check handed to witness.] Yes, Sir.

Mr. Tracy—I omitted to read the first check in evidence. [Reading.]

NEW-YORK, May 3d, 1873.

*Mechanics' National Bank;*

WOODRUFF & ROBINSON.

Pay to the order of F. D. Moulton, \$1,000.

Indorsed: Pay to the order of Theodore Tilton.

Indorsed: "Theodore Tilton."

F. D. MOULTON.

I read now the second check:

NEW-YORK, July 11th, 1873.

*Metropolitan National Bank;*

Pay to the order of F. D. Moulton, \$650.

WOODRUFF & ROBINSON.

Indorsed: Pay to the order of Theodore Tilton.

F. D. MOULTON.

Indorsed: Theodore Tilton.

O. W. RULAND, Attorney.

Mr. Tracy—Now, when did you pay the next money? A. August 15th, according to this account.

Q. Did anything pass between you and Mr. Tilton that you recollect of with regard to the payment of the last amount, \$650? A. Nothing that I recollect of, Sir, except that there must have passed a request.

Q. State what you recollect. We will take what you recollect, and not what you reason on the subject. Do you recollect any communication passing between you and Theodore Tilton on the subject?

Mr. Evarts—Conversation of any kind passing between you? A. I don't recollect any conversation, Sir.

Mr. Tracy—You recollect no conversation? A. No.

Q. How came you to send it? A. Upon some verbal or written application from Theodore; some verbal communication from him in conversation with him. I never sent it without such—

Q. Was it for a loan? A. Was it for a loan?

Q. Yes? A. Well, he has probably told me that he was short of money; that is generally the form of the conversation.

Q. Yes; short of money? A. The next one is Aug. 15th, according to this account, \$350.

Q. [Paper handed to witness.] Is the check presented, the check by which that amount was paid? A. Aug. 15th; yes, Sir.

[Check marked "D, 30."]

The Witness—This makes the third—this one.

Mr. Tracy [reading]:

NEW-YORK, August 15th, 1873.

*Metropolitan National Bank;*

Pay to the order of Theodore Tilton, \$250.

WOODRUFF & ROBINSON."

Indorsed: Pay to bearer. Theodore Tilton.

Q. Now, what communication passed between you and Mr. Tilton in regard to that \$250? A. Substantially the same, Sir; I don't suppose —

Q. When did you send him the next amount? A. The next amount, Sir, seems to be September 12th, 1873.

Q. How much? A. \$500.

Q. I hand you the check; see if that is the check by which he paid that amount? A. September 12th; it is, Sir.

[Check marked "D 31."]

Mr. Tracy, [reading]:

NEW-YORK, September 12th, 1873.

*Mechanics' National Bank.*

Pay to the order of F. D. Moulton Five Hundred Dollars.

WOODRUFF & ROBINSON.

Pay to the order of Theodore Tilton.

F. D. MOULTON.

Indorsed—Theodore Tilton.

Q. What communication passed between you and Mr. Tilton

at the time you sent him that check? A. Substantially the same, Sir.

Q. As before? A. As before; yes, Sir.

Q. When did you send him the next money? A. September 30th, 1873, \$500. Do you want these papers? [Check handed to witness.] September 30th, \$500, appears to be the check, Sir.

[Check marked "D. 32."]

Mr. Tracy—[Reading.]

NEW-YORK, September 30th, 1873.

*Mechanics' National Bank.*

Pay to the order of Theodore Tilton Five Hundred Dollars.

WOODRUFF & ROBINSON.

Indorsed—Theodore Tilton.

Q. Next. A. Next one is December 9th, \$260.

Q. What communication passed between you and Mr. Tilton when you sent him the amount last named? A. Substantially the same; I don't remember anything different.

Q. Exhibit 32: what is the answer? A. Substantially the same; I don't remember any—

Q. Is the check presented the check for the last amount? A. Yes, Sir.

[Check marked "D 33."]

Mr. Tracy, [Reading.]

NEW-YORK, December 9th, 1873.

*Mechanics' National Bank.*

Pay to the order of F. D. Moulton \$260.

WOODRUFF & ROBINSON.

Indorsed—Pay to the order of Theodore Tilton.

Indorsed—Theodore Tilton.

F. D. MOULTON.

Q. Now, the next amount? A. The next amount seems to be a check to A. W. Reid, for Bessie Turner's school-bill, out of that \$5,000; I think you did not take that check, yesterday, Mr. Tracy? Or, you did take it yesterday, I think; I think you had it among your checks yesterday; it was a check for \$300, December 16th. That is in.

Mr. Tracy—Pass from that, then.

The Witness—Yes, Sir.

Mr. Tracy—Did Theodore Tilton make any application for you to pay that bill at that time? A. The A. M. Reid bill? No, Sir; he had nothing to do with the payment of those bills.

Q. Pass to the next one? A. The next one appears to be Feb. 24th, 1874, \$500.

Q. Was the check presented by which it was paid? A. Yes, Sir.

[Check marked "Exhibit D, 34."]

Mr. Tracy—[Reading.]

NEW-YORK, Feb. 24th, 1874.

*Metropolitan National Bank.*

Pay to the order of F. D. Moulton, Five Hundred Dollars.

WOODRUFF & ROBINSON.

\$500.

Indorsed—Pay to the order of Theodore Tilton.

F. D. MOULTON.

THEODORE TILTON.

"Cashied for Mrs. Theodore Tilton," it reads.

Q. Whose handwriting is that?

A. It is the cashier's, I suppose: not our cashier, the cashier of the bank.

Q. "Cashier for Mrs. Theodore Tilton?" A. That is it.

Q. What application was made to you for that amount of money? A. Substantially the same.

Q. As before? A. Yes, Sir.

Q. When did you pay the next? A. The next was paid March 30th, \$400. That is under the letter you had of Mr. Ruland.

Q. [Handing check to witness] Have you the check for the last payment? A. \$400. Yes, Sir.

[Check marked "Exhibit D 35."]

Mr. Tracy—[Reading:]

NEW-YORK, March 30th, 1874.

*Mechanics' National Bank.*

Pay to the order of F. D. Moulton, Four Hundred Dollars.

WOODRUFF & ROBINSON.

\$400.

Indorsed—Pay to the order of O. W. Ruland.

F. D. MOULTON.

O. W. RULAND.

JOHN J. MURPHY.

The Witness—I don't know who John J. Murphy is.

Q. What application did you have for that sum of money? A. A letter.

Q. [Handing letter to witness.] Is the letter presented Mr. Ruland's application for that sum of money? A. Yes, Sir; that is it.

[“Letter marked,” Exhibit D 36.”]

Mr. Tracy—[Reading:]

*The Golden Age.*

*Private.*

NEW-YORK, March 30, 1874.

Dear Mr. Moulton: We are in a tight spot. Mr. St. John is away, and we have no money and no paper. Can't get the latter without the former. We owe about four hundred dollars for paper, and the firm we have been ordering from refuse to let us have any more without money. Haven't any paper for this week's issue.

Truly yours,

O. W. RULAND.

If you can do anything for us I trust you will, to help tide over this chasm.

The Witness—There is a reply to it.

Q. The last check was sent in pursuance of that request? A. Yes, Sir, and the acknowledgement of it.

Q. [Handing letter to witness.] Is that the acknowledgement of the receipt of it? A. Yes, Sir, that is it.

[Letter marked Exhibit D, 37.]

Mr. Tracy [reading:]

*The Golden Age.*

NEW-YORK, March 30th, 1874.

DEAR MR. MOULTON: I am more grateful than I can tell you for the noble and generous way you came to the rescue of *The Golden Age* this afternoon. Truly your friend,

O. W. RULAND.

Q. Did that check of \$400 exhaust the \$5,000 in your hands? A. I will add it up and see, Sir; I think not; the next check paid is May 2d, \$250.

Q. [Handing check to witness]. Is the check now presented the check by which you paid the last amount? A. Yes, Sir.

[Check marked "Exhibit D, 38."]

Mr. Tracy [reading:]

NEW-YORK, May 2d, 1874.

*The Mechanic's National Bank:*

Pay to the order of F. D. Moulton, two hundred and fifty dollars.

\$250.

WOODRUFF & ROBINSON.



Indorsed: F. D. Moulton,  
Golden Age,  
O. W. RULAND, Att'y."

Q. What application did you receive for that amount of money?

A. Substantially the same.

Q. Substantially the same as the verbal applications which you have heretofore stated? A. Verbal or written.

Q. Not the same as the written? A. All the applications were verbal or written from either Mr. Tilton or Mr. Ruland.

Q. When you have named a written application you say the verbal application was substantially the same as you have stated? A. That is not what I mean to say. I have not any further written communications here, but the applications that were made for this money to me were substantially the same.

Mr. Evarts—They were short, and wanted money? A. Yes, Sir; that is about it, Mr. Evarts.

Mr. Tracy—When did you pay the next amount? A. May 26th.

Q. [Handing check to witness.] Is the check presented the check by which you paid that amount? A. Yes, sir.

Mr. Tracy [reading]:

NEW-YORK, May 26th, 1874.

*The Mechanics' National Bank:*

Pay to the order of F. D. Moulton, Esq., three hundred dollars.

\$300.

WOODRUFF & ROBINSON.

Indorsed: "Pay to the order of Theodore Tilton.

F. D. MOULTON,  
THEODORE TILTON.

Q. When did you pay the next? A. That seems to be all, Sir.

Mr. Morris—[To defendant's counsel.] Here is a check of \$150 to Mrs. Tilton. I suppose you want that also?

Mr. Tracy—If it is from the \$5,000 we do. This is August, 1869.

Mr. Morris—We hadn't it yesterday. You called for it then, and we produce it now.

Mr. Beach—[To the witness.] Those items which you have given don't exhaust the \$5,000.

Mr. Tracy—That is what we want to know.

The Witness—The whole amount, as it stands, seems to be \$4 and \$10 since the receipt of that \$5,000, paid out according to the check you have got; the account, as it stands here, is \$6,100 66 received from Mr. Beecher, and paid out \$6,073 15.

Mr. Beach—I think the witness is erroneous; I made those checks amount to \$4,916.

The Witness—It may be that I am mistaken.

Mr. Tracy—We will not stand for a few dollars.

Mr. Beach—Stand for a few dollars! I don't know but that you are standing for any number of dollars.

The Witness—I think you made a mistake, Mr. Beach, if you will pardon me.

Mr. Tracy—You have given the last payment you made on account of that \$5,000? A. I have given the last payment I made to the concern of Woodruff & Robinson, and this is the total account as it stands.

Q. Do you desire to see this check of \$150? A. I don't desire to see it.

Q. Do you know about it? A. Yes, Sir, I know about it. It

is dated August 19th, \$150, on a request from Mrs. Tilton, I believe.

Q. Was that on account of Mrs. Tilton's bills? A. It was used by Mrs. Tilton on that account, I suppose; I don't know. It was paid to her by her request, I suppose; it is entered in the account.

Q. To Bessie Turner? A. No, Sir, to Mrs. Tilton, just as the check is. Are all the checks, Mr. Tracy, in the account?

[Check marked "Exhibit D, 40."]

Mr. Tracy—This is indorsed by Mrs. Tilton, indorsed by Elijah Lovejoy. Pay to G. F. Baker, esq., or order, J. H. Brouck, I think it is, Cashier.

Q. From the time you received this money until you had paid out the whole amount, did nothing pass between you and Mr. Tilton by which he knew whether this was your loan to him, or gift to him, or how he came by that amount of money? A. He never knew it as money, except from me; the money was from me, if I understand your question.

Q. Nothing passed between you on the subject? A. Nothing passed between us on the subject.

Q. Whether it was a gift or a loan? A. Nothing except that first letter. I tried to make it a loan, and he so understands it, as a loan.

Mr. Tracy—We won't talk about how he understands it. The question is, what passed. I move that that be struck out, how he understood it.

Judge Neilson—Strike that out.

The Witness—I will tell you what I said to Mr. Tilton; perhaps that will do.

Mr. Tracy—I understand you to say nothing passed except the note. Do I understand you correctly? A. Not entirely. I sent the note to Mr. Tilton, as I said before, and he returned it to me, and then a few days afterwards I saw him, and he stated to me substantially what was in his note, and then I said to him, substantially, "Well, then, this need not be returned until you are able to return it"—something of that sort. He didn't want to give me a note on demand.

Mr. Tracy—Tell what he said.

Judge Neilson—He is trying to.

Mr. Tracy—After that did nothing pass about all these other payments?

Mr. Beach—No payments.

Mr. Tracy—Loans?

Mr. Beach—No loans.

Mr. Tracy—Well, loans, payments, or anything you like.

Judge Neilson—Did anything else pass between you as to those other sums afterwards? A. No, Sir; I don't think so.

Mr. Tracy—Did he ever thank you for them? A. Yes, Sir; he thanked me for them.

Q. Tell us what he said? A. I don't remember what he said; I cannot recollect now what he said.

Q. Can you not recollect the substance of what he said? A. He didn't thank me for every amount; I don't recollect that he thanked me for every amount, but he frequently expressed his thanks to me.

Q. What did he thank you for? A. For my kindness to him.

Q. When? A. At his house. I remember one night after I made the loan to Mr. Ruland, I showed him Mr. Ruland's grateful expression to me, and he thanked me.

Q. What did he say? A. He said he thanked me for my kindness.

Q. On any other occasion did you call his attention to any specific advance, and have a conversation with him about it? A. I don't recollect that I did.

Q. You remember that same occasion? A. That is all I recollect at this present moment; that is all that occurs to me at this present moment.

Q. Did you leave this matter between you and Mr. Tilton with the impression to Mr. Tilton that this was a gift of yours—all of this amount of money? A. The impression, I think, upon his mind was that it was a gift, if he was never able to return it; but if he was able to return it, he should return it.

Q. How did that impression arise? A. From what I said to him in the first conversation. You are asking me about my impression?

Q. That related to the \$1,000? A. Yes, Sir.

Q. And to nothing else? A. That is what it related to.

Q. Was the subject ever alluded to again after that? A. I don't recollect at the present moment, except on the occasion I had referred to.

Q. What limit was there understood to be then, and why did it stop at this time? A. Why did it stop? I was out of funds, and I didn't give him any more.

Q. Were further applications made? A. I don't recollect any further applications were made.

Q. No further applications were made?

Mr. Beach—[To the witness.] Finish your answer, if there is any qualification to it.

The Witness—The last conversation that I had with him, that I recollect, was that he wanted to be rid of *The Golden Age*, that he could not—that he wanted to dispose of *The Golden Age*, and he did dispose of it.

Q. When was that? A. I don't recollect the date.

Q. Can you not tell about when it was? A. No, Sir; I cannot tell about when it was, even. It was told to Mr. Carpenter. The date Mr. Carpenter can fix when he comes on the stand, if he does come on it.

Mr. Evarts—I don't know anything about Mr. Carpenter.

The Witness—I am trying to find the date.

Mr. Tracy—Can you fix the season of the year it was, or the year? A. I don't recollect when it was; it was in the early part of 1874, I think; I won't be certain about it.

Q. Was it not immediately after your last advance from this fund? A. No, Sir. What was the date of my last advance? I will try to fix it, if I can, for you.

Mr. Beach—May 26th, 1874.

Mr. Tracy—May 26, it is stated to be, 1874. Now, Sir, was not that transfer of *The Golden Age* made on the exhaustion of the last payment from this fund? A. I don't think it was. That is my recollection of it. I don't think it was. I will try to fix it for you.

Q. Cannot you tell whether it was two weeks, or three weeks, or three months after that? A. I cannot.

Q. You cannot tell anything about it? A. No, Sir.

Q. Now, from the time you received this money, in May, 1873, until it was exhausted, had Mr. Tilton no source of revenue to your knowledge except this fund? A. I don't know that he had, Sir.

Q. Did this account stop of itself, or were applications made to you, and refused by you, because there was no money? A. They were stopped by me when the account was out.

Q. Were there applications renewed? A. I don't recollect.

Judge Neilson—He answered that before, that there were none.

Mr. Tracy—Has any of this money been returned to you. A. No, Sir; not yet. [Laughter.]

Mr. Evarts—It is now four o'clock.

Judge Neilson—I want you to close the examination of this witness, gentlemen. Our reputation, professionally and morally, is involved.

The Witness—I will stay all night, Judge, as far as I am concerned.

Judge Neilson—I wish, as a matter of economy, gentlemen, you would finish the examination of this witness this evening.

Mr. Tracy—It is impossible to finish it this evening.

Judge Neilson—How many days will it take you to finish it?

Mr. Tracy—I hoped to close it to-day when I came in Court this morning, if your Honor please; but it now looks as if it will take Monday to close it.

Judge Neilson—It ought not to.

Mr. Evarts—We don't think it ought to; but it takes a great deal of time to get through with this matter.

Judge Neilson—I think, gentlemen, you ought to commence earlier and sit later to dispose of the witness. I do not wish to be oppressive to you, but considering the value of your time now, you ought to go on and close the examination.

Mr. Evarts—We feel that pressure very much, no doubt; but the feeling on both sides has been that we make no real gain by attempting to prolong the session.

Mr. Beach [to Mr. Evarts]—I quite agree with you.

Mr. Evarts—That is our feeling. It is no pleasure to us to prolong the matter, as your Honor suggests. On the contrary, it is very burdensome to us professionally.

Judge Neilson—I wish the audience to keep perfectly silent, and keep their seats until the jury retire.

Mr. Evarts—We are through with this branch, and we shall try not to take much longer.

Judge Neilson [to the Jury]—Gentlemen, please be in your seats punctually at 11 o'clock on Monday morning.

The Court thereupon adjourned to Monday morning, at 11 o'clock.



## ELEVENTH DAY'S PROCEEDINGS.

THE CROSS-QUESTIONING CONTINUED.  
THE FORMER STATEMENTS OF THE WITNESS BROUGHT  
UP—HIS PAST FRIENDSHIP AND RECENT HOSTILITY  
TO THE DEFENDANT—THE BEARING OF  
THE WOODHULL STATEMENT.

Mr. Tracy pressed Mr. Moulton more closely on Monday than he has done before. The questioning was severe and searching, and the witness was more on the alert than he usually appears to be. At the opening his demeanor was characterized by the most imperturbable coolness, but as the questions were put by Mr. Tracy with increased severity, Mr. Moulton buttoned his coat closely to the throat and his face became slightly flushed as though he were somewhat out of temper. Perhaps the highest point to which the evident though stifled excitement arose was when the fact of the publication of an article unfavorable to Mr. Beecher, printed in a Brooklyn Sunday newspaper, was broached. Having shown that the article was printed from *The Golden Age* proofs, Mr. Tracy drew himself up to his full height, advanced toward the witness, and, stretching his arm above Mr. Beach's head and pointing his finger straight at Mr. Moulton, he asked in loud, grating tones, "Now, Sir, how long after that publication did you receive the \$5,000 from Mr. Beecher?" There was a breathless pause for a moment, during which the witness was twirling about in his revolving chair and stroking his mustache with one hand, while the other was in his pocket. Then, with the utmost placidity of manner, the witness replied that he could not recollect.

Mr. Moulton seemed to delight in bringing Mr. Tracy's name within the pale of the scandal. Thus, when Mr. Tracy asked him to fix the time when he (Mr. Moulton) heard Mr. Tilton's "true story" read, the witness said: "It was in the Winter of 1872. You'll remember it, Mr. Tracy; you were there and went to sleep." Also, when Mr. Tracy wished to know how thick a certain roll of manuscript was, he said: "I can't remember; you saw it, General, and perhaps can tell."

The first step toward the impeachment of Mr. Moulton's testimony was taken at the afternoon session by the aid of affidavits of many prominent members of the Produce Exchange and others, who had sworn that Mr. Moulton, after the Woodhull publication, had said that the story was false, and also that since the Plymouth investigation he had

shown violent hostility toward Mr. Beecher. With those affidavits in his hand Mr. Tracy put his questions. Among the first queries was this:

"Did you say to Mr. Wallace Caldwell that Mr. Beecher was a liar and a libertine, and that if personal violence would do any good that you would cut him down?" "No, Sir!" emphatically replied Mr. Moulton.

The witness was asked if he had made similar statements to Mr. Storrs, Mr. Tenney, and many other gentlemen, and although he remembered having talked with those persons, he seemed to have forgotten entirely what he said. In one case, when asked whether he had said to W. D. Barbour that Mr. Beecher was a perjurer and a libertine, he answered, "I may have said that Mr. Beecher was a libertine and a perjurer—as he is."

Mrs. Woodhull's notorious paper, which has been dragged into the controversy, has been the cause of serious dispute. The crevice through which it crawled will show the ingenious character of the warfare carried on by the lawyers. Mr. Fullerton last week introduced the Woodhull statement of Jan. 2, 1872, to show that Mr. Beecher was accused and did not deny the crime therein charged. Mr. Beecher's lawyers thought they saw a weak spot there, and on Friday tried to introduce various parts of the same article giving Mrs. Woodhull's views regarding the marriage relation, and further asserted that Messrs. Moulton and Tilton were also charged with heinous crimes by the same paper, which they had not denied. This step immediately aroused all of Mr. Tilton's lawyers, and they fought the motion so fiercely that the matter had to be adjourned until Monday, when the engagement was resumed. Mr. Beach ridiculed the idea advanced by his opponents, but Mr. Evarts neatly turned the point by saying that the argument of Mr. Beach was a satire on the old proverb that "what is sauce for the goose is sauce for the gander." That thrust gave Mr. Fullerton an opportunity to say to Judge Neilson that "the fact that the decalogue contains the commandment, 'Thou shalt not commit adultery,' does not justify their reading the story of Ananias and Sapphira."

The result of the contest was that Judge Neilson ruled out nearly all the parts read, exceptions being taken to those portions admitted.

## OPENING SCENES OF THE WEEK.

The court-room was uncomfortably cool on Monday morning, but every one and everything looked

bright and fresh within it. The sunlight streaming into the tall windows and filtered through the yellow curtains tinged everything with its hue from the bald head of the first jurymen and the forms in the audience to Judge Neilson's bench and the tables and chairs. Faces that on Friday told of weariness and loss of vitality had grown younger, and the work of the new week seemed at least not to be dreaded. Judge Neilson was as usual in court before the lawyers of the plaintiff and defendant; and as the latter entered he greeted them cheerily with a smile and a nod. Mr. Evarts first threaded his way through the crowd, his slight form a little bent, and with his tall hat carelessly upon the back of his head. He carried a large valise, which he placed under the table, remarking to the jury, with a laugh as he did so, that he had yet to learn that his retainer paid him for "walking across the river on loose ice." Messrs. Pryor, Shearman, Beach, and Tracy, came in a few moments after, and at precisely 11 o'clock Mr. Moulton appeared. He bowed to the Judge and the lawyers, and immediately took the witness chair, in which he had already sat seven days and a half. Mr. Morris bustled in on the heels of Mr. Moulton, with his ponderous packets of envelopes containing the scandal literature, which he placed before him upon his table in consecutive order, as if they were chessmen, and needed to be upon a certain square. Mr. Tilton strode in alone and took his accustomed position, and Mr. Fullerton, who followed him, carried a copy of *Woodhull and Claflin's Weekly*, over which hostilities were to be opened.

#### THOSE WHO LISTENED ON MONDAY.

The spectators in the court-room had little to talk about in the morning except the absence of Mr. and Mrs. Beecher. It was finally ascertained that the defendant was suffering from a severe cold, and the curiosity of the crowd on that subject was appeased. But when it was noticed that Mrs. Tilton and her lady friends did not make their appearance, the crowd had a fresh subject for speculation and discussion. The cause of Mrs. Tilton's absence could not be certainly ascertained, but various reasons were given by persons in the court-room who professed to know whereof they were talking. One said she was absent because counsel for defense thought her presence might be unfavorably commented on; another insisted that she was ill, and a third claimed to have learned from one of the lady's friends that

she was too sensitive to listen to the testimony given against her by Mr. Moulton. The statement that she was suffering from indisposition received the most credence. Throughout the day's proceedings there were no ladies in court. The Plymouth Church seats were filled by the regular attendants on the trial, Mr. Beecher's youngest son, and the Rev. Mr. Halliday, the assistant pastor of Plymouth Church, being seated in the front row, near Mr. Shearman.

Mr. Tilton was in court promptly at 11 o'clock, and appeared to be in excellent spirits. Upon taking his seat he glanced over at the chair usually occupied by Mr. Beecher, and then turned around and looked at that part of the house where Mrs. Tilton is accustomed to sit while in court. He looked that way frequently during the day, as if expecting Mrs. Tilton's appearance on the scene.

#### THE PROCEEDINGS.

Ex-Judge Porter was expected to be in Court on Monday, Jan 25, but the gentleman thought it unwise to expose himself out of doors to the cutting March-like wind in the present state of his health. After an apology from Mr. Evarts for his associate's continued absence, the cross-examination of Mr. Moulton was resumed. The various publications which, taken together, make up what is known as "the Woodhull scandal," were read in whole or in part by Mr. Shearman, and the witness was questioned about them.

#### THE WOODHULL SCANDAL LITERATURE.

Francis D. Moulton was recalled, and the cross-examination continued:

Mr. Evarts—If your Honor please, we had hoped that our associate, Judge Porter, would be able to be in Court to-day, but the severity of the weather yesterday was such, of course, as to prevent him from for the first time taking the air, and he will not be in Court to-day, but I hope that he will be able to-morrow. He has not left his room since he was taken sick.

Mr. Shearman—I have now got the original copy of this paper.

Judge Neilson—Have you marked the portions that ought to come in under this ruling?

Mr. Shearman—We have, Sir; and we have made them just as few as possible, for the purpose of showing what the charge was to be denied by these three parties.

Judge Neilson—Then you will please to read it.

Mr. Shearman—The following are extracts from the publication of Mrs. Victoria C. Woodhull, November 2, 1872. It was actually issued October 28, 1872:

Subsequently I published a letter in *The World*, in which was the following sentence: "I know a clergyman of eminence in Brooklyn who lives in concubinage with the wife of another clergyman of equal eminence."

It was generally and well understood, among the people of the press especially, that both of these references were to this case of Mr. Beecher's, and it came to be generally suspected



that I was better informed regarding the facts of the case than others, and was reserving publicity of my knowledge for a more convenient season. This suspicion—

Mr. Fullerton—No; that is as far as you can read under the rule.

Mr. Shearman—Well, we propose to offer the following as part of the evidence which these gentlemen have produced.

Judge Neilson—Now, read that separately under the ruling.

Mr. Fullerton—Your Honor will understand that so far as he read we do not object. I do object however—

Judge Neilson—Now, he reads under the rule what it may be necessary to read in order to fix his exception, provided it is not admissible.

Mr. Fullerton—Yes, Sir.

Judge Neilson—Read that portion, if you please.

Mr. Shearman [reading]:

This suspicion was heightened nearly into conviction when it transpired that Theodore Tilton was an earnest and apparently conscientious advocate of many of my radical theories, as appeared in his far-famed biography of me, and in numerous other publications in *The Golden Age* and elsewhere. Mr. Tilton's warmest friends were shocked at his course, and when he added to his remarkable proceedings, his brilliant advocacy of my Fourteenth Amendment theory, in his letters to Horace Greeley, Chas. Sumner and Matt Carpenter, they considered him irremediably committed to the most radical of all radicals.

Mr. Fullerton—That part, Sir, is objected to.

Judge Neilson—Mr. Shearman, it seems to me that there is no prior evidence that would call for that particular clause.

Mr. Shearman—Our theory in regard to that is that this was a charge made against all three of these gentlemen, and they met—so Mr. Moulton has testified—to consult about the charge that was made in effect against all of them.

Judge Neilson—And with a view—

Mr. Shearman—With a view to a common answer or a separate answer, or to no answer.

Judge Neilson—With a view to a common answer.

Mr. Shearman—With a view to an answer or silence.

Mr. Fullerton—It was not a charge against three.

Judge Neilson—That is ruled out and you take an exception.

Mr. Shearman—Yes, Sir.

Mr. Evarts—Your Honor will not overlook our general proposition that they having introduced the story as being in mass the subject of conversation with Mr. Beecher we have a right to read it as so introduced by them; and upon the further proposition that we regard it as in upon their side. It is proper, of course, that we should state the views that your Honor may see them.

Judge Neilson—Yes, Sir.

Mr. Fullerton—Well, the more frequently they are stated the better it will appear for us, because the objection grows out of the statement itself without any reply.

Judge Neilson—I understand that the story was referred to in the evidence upon the part of the plaintiff as injurious to the defendant, and calling for some answer from him, or perhaps to be met with entire silence, that the course to be pursued was uncertain in regard to that. So much of the article as has a bearing upon that is received. You have an exception to the other.

Mr. Shearman—Let me call your attention to this fact. In Judge Morris's opening he dwelt very largely upon the fact that no answer was made to this article by Mr. Beecher, and that consultations were held between Mr. Beecher, Mr. Tilton and Mr. Moulton in regard to what was to be done; and it was agreed, as Mr. Moulton says, that none of them should answer. Now, it has been argued from that already before the jury, that that is evidence of guilt upon the part of Mr. Beecher, that the fact that he did not answer these charges against him was evidence to go to the jury that they were true, and very strong evidence. Now, if we show your Honor upon their own evidence, upon a paper which they introduce, that here were charges not only against Mr. Beecher, but against Mr. Moulton and against Mr. Tilton—charges which we presume they will not deem to be true—charges of a vile and odious nature against those persons as well as against Mr. Beecher, is it not part of the proper evidence to be brought in at once in this case for the jury to look at collectively, so that they may say, "Why, charges were made against all of these three men; one was accused of as bad an act as another. One was accused of adultery, it is true, but the husband was accused of connivance with the adultery, of a positive re-introduction of the adulterer into his family. The husband was accused of that more odious crime than adultery, the recommendation to his wife to commit adultery again, and the Mutual Friend was accused of the vile crime of going with a pistol and presenting it at the head of the defendant and demanding a paper." Now, the counsel may say of the witness now on the stand that that charge against him was not true. We presume that Mr. Tilton will say when on the stand that the charge against him was not true. We assume that, and have we not a right to show that those charges were made in conjunction with the other charge against Mr. Beecher, that they were all inseparably mixed together, and that there was no more reason why Mr. Beecher should be deemed guilty for not answering, than why Mr. Moulton should be deemed guilty of taking a pistol and threatening murder, and Mr. Tilton be deemed guilty of the worse crime of reintroducing the adulterer to his wife and asking him over again to commit adultery as often as he pleased.

Judge Neilson—I feel the force of your explanation.

Mr. Morris—The counsel has misstated a portion of my opening.

Judge Neilson—So I was going to say. I will read that and will perhaps correct this ruling, or let the exception stand as it is.

Mr. Morris—But the counsel, Sir, has made a misstatement in reference to my opening, which I have a right to correct right here, and I propose to do it. In speaking of the reference that I made to the fact that Mr. Beecher did not deny—made no denial to the publication of this article, I said that it remained without any denial for the space of about six months. In the following Spring, after the publication of the tripartite covenant, and after Mr. Bowen and Mr. Claffin had visited Mrs. Woodhull to ascertain what evidence she might have in her possession, it was then in connection with those facts and circumstances that Mr. Beecher did publish a short card in *The Brooklyn Eagle*, and

that was six months after the publication of this article, and that was my statement to the jury.

Judge Neilson—I will read that part of the opening, Mr. Morris.

Mr. Shearman—The difference then, Sir, which Mr. Morris now makes between the attitude of these three gentlemen that are charged with this atrocious crime is that Mr. Beecher is presumptively guilty, because he did not deny it for six months, but that others are presumptively innocent because they never denied it at all.

Mr. Morris—Your Honor understands very well that this is a specious statement. Your Honor knows, and every man in this community knows, that Mr. Beecher was the man, and the sole man, called upon to deny them.

Mr. Shearman—We will see.

Mr. Morris—There was no call on the part of the press that Mr. Moulton or Mr. Tilton should deny. Mr. Beecher was the man charged, and he was the man called upon to deny, and he was silent.

Judge Neilson—All that will, perhaps, be governed by the jury in the end. I will hear what further portion you wish to read.

Mr. Shearman—I am not aware that the calls of the newspapers are evidence at all. Here are the facts, and what they call for we are to give.

Mr. Morris—You are making a misstatement of the evidence.

Mr. Shearman—The next paragraph we propose to read is on the third column. [Reading:]

Reporter—Now, Mrs. Woodhull, would you state, in the most condensed way, your opinions on this subject as they differ from those avowed and ostensibly believed by the public at large?

Mrs. Woodhull—

Mr. Fullerton—One moment. That I object to.

Mr. Shearman—Very good. Let us state it first and see what his Honor's ruling is.

Mr. Fullerton—Does the gentleman offer that as a part of the charge against Mr. Beecher?

Mr. Shearman—I offer it as a part of the charge made against these three gentlemen collectively. I say, if your Honor please, that it is impossible to separate the charges made by Mrs. Woodhull into three distinct, unconnected charges against these three gentlemen respectively. That cannot be done. It was a single charge, a charge that Mr. Beecher had committed adultery with the wife of Mr. Tilton; that Mr. Tilton, first indignant about that, not only became, through the influence of Mrs. Woodhull, reconciled to it, but approved of it and rejoiced in it; and she charges Mr. Moulton, the mutual friend, with going with a pistol to extort, by putting it at the head of Mr. Beecher, a paper, and afterwards standing by, a mutual friend, and approving of the whole thing. It is all one transaction.

Judge Neilson—This paper is brought before us first because in the evidence of the plaintiff—this witness's—reference was made to a specific article—a specific charge, a single clause, which therefore ought to be read. There is in that same evidence a reference to the Woodhull story and it became desirable to have what the story was. It was, of course, simply referred

to by the witness as a story prejudicial to Mr. Beecher and annoying to him.

Mr. Fullerton—Referred to only as that, and all the object we had in view in calling attention to the publication by Mrs. Woodhull was to show that there was a charge therein made against Mr. Beecher which he did not deny, and which under the advice of his friends he refused to deny. Now, the counsel upon the other side constantly drags in the allegation that there is a charge here against these three persons, that all were alike charged with infamous offenses. There is no occasion to do that except to illustrate the old adage that misery loves company. There is no reason at all, so far as the trial of this issue is concerned, why any charges against Mr. Tilton or any charges against Mr. Moulton contained in that publication should be alluded to for a single moment. It has no bearing whatever upon the issues between these parties. There may be charges there against these gentlemen, but they were not called upon to deny those charges. Whenever they are put upon trial for any offense and the charge in that publication has any bearing upon the issue, then they will be judged for having kept silent, if they did keep silent. I object, therefore, to the reading of that part of this paper under the ruling of your Honor, and if the counsel on the other side takes the responsibility of offering this part, which he now proposes to read, as referring to the charges made by Mrs. Woodhull against Mr. Beecher, why then let it be so understood; but the object of offering it is very apparent. Here is a promulgation of Mrs. Woodhull's peculiar doctrines upon the subject of marriage. I don't know what that has to do with this case. The gentleman may offer it if he chooses, but I wish to know in what view he offers it, whether he offers it with reference to the charges against Mr. Beecher, and if not, then under what ruling of your Honor does he offer it?

Mr. Shearman—If your Honor please—

Judge Neilson—If you will read now—I understand it.

Mr. Shearman—Allow me to say, however, your Honor, that it was the whole Woodhull story that was made the subject of conversation, and that the witness did not say simply that it was the charge against Mr. Beecher contained in that story that was made the subject of conversation, but the Woodhull story, and they consulted as to what answer they should make to it, and the question was raised as to what Mr. Tilton could say in reply, as well as what Mr. Beecher could say in reply.

Mr. Morris—Let the counsel call our attention to the evidence.

Mr. Shearman—I read from the evidence:

Then, Sir [says Mr. Fullerton], what occurred in November, 1872, with reference to Mrs. Woodhull? A. There was a publication in Woodhull and Claflin's paper.

Q. In regard to that? A. Yes, in regard to Mr. Beecher, Mrs. Woodhull and Mr. Tilton.

Q. Now, what occurred upon that publication? A. I saw Mr. Beecher shortly after the publication.

Then goes on the conversation all about the story. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. There is not a single case, your Honor, in which it was said that there was a consultation how they had better meet the charge against Mr. Beecher contained in that story; not an instance of it.



Judge Neilson—But the story—we are very glad to learn it is a story.

Mr. Beach—Your Honor will remark from the reading of the evidence that it was the story in regard to this—that is, in regard to this matter, this accusation, the subject of this trial.

Mr. Shearman—I do not see that.

Mr. Beach—You have just read it.

Mr. Shearman—I have read it just as it is written. They consulted for that purpose.

Mr. Beach—Now, Sir, the question of Mr. Fullerton calling for a portion of the Woodhull story, was in regard to this transaction, that is, the charge against Mr. Beecher. Now, Sir, for what was that offered? For the purpose of showing a specific charge of adultery against Mr. Beecher, and the manner in which he met that accusation, the policy which he adopted and the advice of his friends in regard to it. What do they now propose to read? A portion of this publication, not in regard to the charge against Mr. Beecher, but in regard to the charge against Tilton and Moulton, having no connection whatever with the issue before your Honor. And what will be the result, your Honor, if it is read, publishing charges against Mr. Moulton and Mr. Tilton? Why, that we have side issues raised in regard to the truth of those charges, and they must be investigated. If they are permitted to be read, Sir, promulgating false charges on this trial against Mr. Tilton and against Mr. Moulton, the whole merits of those accusations must be opened before your Honor and this jury for investigation, and we are led at once into collateral issues which will exhaust the time of this Court most unprofitably and needlessly. Now, I submit to your Honor, that the only object of the reading of this portion of this publication of Mrs. Woodhull, is to insinuate an accusation against the plaintiff in this case and the witness upon the stand, drawing in issue their connection with Mrs. Woodhull, which connection may be shown by legitimate evidence, if you please, but not by the declarations of that lady herself. The effect is to introduce, as evidence against these gentlemen the charges, the insinuations, the inculpations of Mrs. Woodhull as against these parties, unverified by any sanction whatever of a court of justice. I submit to your Honor it would be a gross injustice to permit that sort of evidence to be introduced.

Mr. Evarts—We are entitled, I think, to close the argument.

Mr. Beach—I think not, Sir, when we make an objection.

Mr. Evarts—Now, my learned friend's last proposition seems to me but a somewhat refined and elegant proposition of the old maxim, that what is sauce for goose is sauce for gander. The argument here is, that when this story came out, which is an entire novel, if you please, narrative, it became the subject of conversation, and the conversation has been detailed, so far as it has been detailed, as applying to the whole story. "That story" is what it is called. It was not in Court, and it was to be produced the next day. It is now here. Now, the argument for which it was introduced was this: that there being a proposition of a charge therein against Mr. Beecher in connection with this matter of Mr. Tilton and himself, that the consultations and the desires to have it answered ending in not answering it, indicate an inability to

answer it or an inclination not to tell the truth. But when the substantive matters that bear to the prejudice of Mr. Tilton and Mr. Moulton in this argument are offered to be read, my learned friend says that though the facts may be learned by judicial evidence, yet Mrs. Woodhull cannot be heard to make the imputation. Hasn't she been heard to make the imputation against Mr. Beecher, the non-answer of which is the argument against Mr. Beecher, and, by the same proposition, when her statements against Moulton and Tilton are known to them, and form the subject of consultation for a joint answer against a joint libel, is not the same argument that if they did not answer, then they admit the truth against them? The argument may be worth nothing or worth much; and it is the same argument, it is the same course of evidence, it is the same legitimate evidence that a charge was made known to them, made the subject of conversation, the propriety and duty of an answer to it was made the subject of consultation in the same light and in the same sense, and the concurring judgments were that silence was the best course. Now, if that is sound as an imputation against Mr. Beecher, it is sound as an imputation against Mr. Tilton and against Mr. Moulton. And my learned friend understands that when a husband brings an action of this kind, involving the question of the adultery of his wife, why all the topics that bear upon that issue as between husband and wife necessarily come into play. They are not collateral questions. We have not introduced the Woodhull story; it has been introduced on the other side to bear heavily against our client for his omission to answer, or the manner in which he did answer.

Mr. Beach—The only answer necessary to that argument is, that it is founded entirely upon a false assumption that there was a mutual consultation as to the manner in which the charges of Mrs. Woodhull against Tilton and Moulton should be met.

Judge Neilson—I understand; the question was how Mr. Beecher should meet it, whether by silence or some kind of an answer.

Mr. Fullerton—I beg your Honor to bear in mind that the paragraph which they now propose to read has no reference to the charge against Mr. Tilton or against Mr. Moulton or Mr. Beecher. They propose to read now the atrocious sentiments of this woman in regard to the marital relation. That is all they propose, and if your Honor will take the paper and read the paragraph which the gentlemen now offer to read you will see that I am strictly right.

Judge Neilson—Yes, I think you are right; he would have a right to read it, however, in order to form his exception.

Mr. Fullerton—Well, I only want to know whether the gentleman reads it as coming within your Honor's ruling that he might read everything that related to the charge.

Mr. Shearman—I do read it.

Mr. Fullerton—I do not see what relation there is between her sentiments in regard to marriage and the charge against Mr. Beecher, Mr. Tilton and Mr. Moulton. Because we have alluded in our evidence to this story inculpating Mr. Beecher does not give them the right to prove

everything else in the story by any means. If we could prove, or have occasion to prove on this trial that the Decalogue contained the words, "Thou shalt not commit adultery," it does not give them the right to read in evidence the story of Ananias and Sapphira in another part of the same volume.

Mr. Shearman [Reading]:

Now, Mrs. Woodhull, would you state in the most condensed way your opinions on this subject, as they differ from those avowed and ostensibly loved by the public at large?

Mrs. Woodhull—I believe that the marriage institution, like slavery and monarchy, and many other things which have been good and necessary in their day, is now *effete*, and in a general sense injurious, instead of being beneficial to the community, although, of course, it must continue to linger until better institutions can be formed. I mean by marriage, in this connection, any *forced or obligatory tie* between the sexes, any *legal intervention or constraint* to prevent people from adjusting their love relations precisely as they do their religious affairs in this country, in complete personal freedom; changing and improving them from time to time, and according to circumstances.

Judge Neilson—Now, as to that clause, it is merely an atrocious sentiment stated by that writer, and stated as her opinion simply. I rule that out, and allow you to take an exception.

Mr. Shearman—Will your Honor allow me to read the paragraph?

Judge Neilson—The last paragraph may be proper; but, as to this, take an exception.

Mr. Shearman—The next paragraph we propose to read is from the second column:

Reporter—Is it possible that Mr. Tilton confided this story to you? It seems too monstrous to be believed.

Mrs. Woodhull—He certainly did, and what is more, I am persuaded that in his inmost mind he will not be otherwise than glad when the skeleton in his closet is revealed to the world, if thereby the abuses which lurk like vipers under the cloak of social conservatism may be exposed and the causes removed. Mr. Tilton looks deeper into the soul of things than most men, and is braver than most.

Mr. Beach—That is objected to.

Judge Neilson—Same ruling as to that, of course.

Mr. Shearman—What is your ruling?

Judge Neilson—That it is not germane to the matter before us, and that you can read it simply for the purpose of pointing your exception.

Mr. Shearman—Then we will take an exception. The next paragraph is as follows:

His revelations were made subsequently, at sundry times, and during months of friendly intercourse, as occasion brought the subject up. I will, however, condense his statements to me, and state the facts as he related them, as consecutively as possible. I kept notes of the conversations, as they occurred from time to time; and the matter is so much impressed upon my mind that I have no hesitation in relating them from memory.

Reporter—Do not you fear that, by taking the responsibility of this *exposé*, you may involve yourself in trouble. Even if all you relate should be true, may not those involved deny it *in toto*, even the fact of their having made the statements?

Mrs. Woodhull—I do not fear anything of the sort. I know this thing must come out; and the statement of the plain ungarished truth will outweigh all the perjuries that can be invented, if it come to that pass. I have been charged with attempts at blackmailing, but I tell you, Sir, there is not money enough in these two cities to purchase my silence in this matter.

I believe it is my duty and my mission to carry the torch to light up and destroy the heap of rottenness, which, in the name of religion, marital sanctity and social purity, now passes as the social system. I know there are other churches just as false, other pastors just as recreant to their professed ideas of morality—by their immorality you know I mean their hypocrisy. I am glad that just this one case comes to me to be exposed. This is a great congregation. He is a most eminent man. When a beacon is fired on the mountain, the little hills are lighted up. This exposition will send inquisition through all the churches and what is termed conservative society.

Judge Neilson—Same ruling as to that; you will take an exception.

Mr. Shearman—The next paragraph which we offer is the following—words put into the mouth of Mr. Tilton; and the gentleman will pardon me if I do not read literally to show that it is what Mr. Tilton said, because I could not do that without putting—

Mr. Fullerton—Where is that?

Mr. Shearman—I am endeavoring—we are all endeavoring to put as little of this as is possible in.

Judge Neilson—Some of those atrocious sentiments ought to be omitted, I think.

Mr. Shearman—It is this paragraph that I propose to read now, as put by Mrs. Woodhull in the mouth of Mr. Tilton.

I had one friend who was like a brother, Mr. Frank Moulton. I went to him and stated the case fully. We were both members of Plymouth Church. My friend took a pistol, went to Mr. Beecher, and demanded the letter of Mrs. Tilton, under penalty of instant death.

Judge Neilson—That will remain in, although it already appears that Mr. Moulton was not a member of Plymouth Church.

Mr. Fullerton—And that he did not take a pistol and demand the paper.

Judge Neilson—Well, that is the clause referred to in your evidence?

Mr. Fullerton—No, Sir; we did not refer to it at all. They have referred to it upon the cross-examination, and asked if it were true, and they have proved themselves that it was untrue.

Mr. Shearman—That is precisely what we wanted to prove; the next paragraph—turn over the page.

Mr. Beach—We except, Sir, to that ruling.

Mr. Shearman—I propose to read a short paragraph, and to state that, although no name is mentioned in this particular paragraph, it refers to Mr. Tilton.

Mr. Beach—Well, that statement we move to have—

Mr. Shearman—I am offering this to the gentlemen because they object to having a great deal of this come in; and your Honor, as I think very properly, objects to having too much of this matter in. If I were to read enough of the article to show that it referred to Mr. Tilton, I should have to read the whole paragraph. If they object to my statement, I shall have to read the whole paragraph.

Judge Neilson—Well, you can read the passage that you have in mind just now.

Mr. Shearman—[Showing paper to Mr. Fullerton.] If you object to my stating that it refers to Mr. Tilton—

Mr. Fullerton—One moment.

Mr. Shearman—Well, your Honor, I offer, if the gentlemen



on the other side do not object, to have it understood and assumed that the paragraph which I now read relates to Mr. Tilton. If they object, I shall then read the whole of a long paragraph, to show that it does.

Judge Neilson—Well, read that paragraph; let us see what it is.

Mr. Shearman—This paragraph is as follows, Mrs. Woodhull, speaking of Mr. Tilton :

I assumed at once, and got a sufficient admission, as I always do in such cases, that he was not exactly a vestal virgin himself; that his real life was something very different from the awful virtue he was preaching.

Judge Neilson—The awful virtue he was preaching?

Mr. Shearman—Yes, Sir; "the awful virtue he was preaching."

Mr. Pryor—So we preach virtue?

Mr. Shearman—The next paragraph which I—

Mr. Fullerton—One moment. Does your Honor admit that? That is, the offer to read?

Judge Neilson—I think we will admit that; we will let that stand.

Mr. Fullerton—We except.

Mr. Shearman—The next paragraph is as follows:

Reporter—Then Mr. Tilton became, as it were, your pupil, and you instructed him in your theories?

Mrs. Woodhull—Yes, I suppose that is a correct statement.

We offer that; and now, if your Honor please, we renew our former offer of the exposition of Mrs. Woodhull's views.

Judge Neilson—That last clause is not received. You take an exception. She says, "I suppose." It is a remarkable degree of modesty on her part, particularly in speaking of a fact which she knows.

Mr. Fullerton—It is not so remarkable as the offer in evidence.

Mr. Shearman—We also offer the paragraph formerly excluded, in which Mrs. Woodhull states her views concerning the marriage institution, and her belief that it is effete and ought to be superseded. We offer it in connection with this last paragraph, in which she says that she supposes Mr. Tilton became her pupil and was instructed in her theories.

Judge Neilson—Yes, it will stand on the former ruling.

Mr. Shearman—And also with the paragraph last admitted with reference to his not being exactly a vestal virgin. Your Honor rules it out?

Judge Neilson—Yes, I will hold to the ruling before made.

Mr. Shearman—We offer it, as you understand, as being one of the charges made against Mr. Tilton, in connection with charges against Mr. Beecher, and we take an exception.

Mr. Fullerton—In other words, Mr. Tilton was charged with not being a virgin, and you believed it.

Mr. Shearman—I don't see the point. As Judge Fullerton's remarks are always brilliant, if I do not see the point, I suppose it is my fault, not his. The next paragraph I shall offer is the following:

I was then contemplating my Steinway Hall speech on social freedom, and prepared it in the hope of being able to persuade Mr. Beecher to preside for me, and thus make a way for himself into a con-

sistent life on the radical platform. I made my speech as soft as I conscientiously could. I toned it down in order that it might not frighten him. When it was in type, I went to his study and gave him a copy, and asked him to read it carefully, and give me his candid opinion concerning it. Meantime, I had told Mr. Tilton and Mr. Moulton that I was going to ask Mr. Beecher to preside, and they agreed to press the matter with him.

I also offer the following paragraph to accompany that :

A few days before the lecture I sent a note to Mr. Beecher asking him to preside for me. This alarmed him. He went with it to Messrs. Tilton and Moulton, asking advice. They gave it to him in the affirmative, telling him they considered it eminently fitting that he should pursue the course indicated by me as his only safety; but it was not urged in such a way as to indicate that they had known the request was to have been made.

#### THE WOODHULL PUBLICATION EXCLUDED.

Mr. Fullerton—Well, Sir, they are objected to upon the same ground.

Mr. Shearman—This should be connected with what I last read, "They then took me again with them and endeavored to persuade him." We offer that your Honor.

Judge Neilson—Those are ruled out. You take an exception as to the whole or any part of it.

Mr. Evarts—Perhaps your Honor might remember that these also bear upon the question of the efforts charged upon Mr. Beecher of trying to conciliate this lady and to temporize concerning this story by showing that these gentlemen, Mr. Tilton and Mr. Moulton, were acting in her interest to accomplish the result, to wit, the benefit to the school of morals and philosophy of which she was an advocate. We have had a great deal about that, and this bears upon that.

Mr. Fullerton—Yes, Sir; and your Honor will not forget, after that observation, that Mr. Moulton's connection with this woman, from first to last, was simply for the purpose of saving Mr. Beecher from exposure; that his acquaintance commenced when he undertook to save him, and ended when he found that he could not accomplish his object.

Mr. Evarts—That is your view?

Mr. Fullerton—Yes; that is my view; that is the reason I mention it.

Mr. Evarts—We offer this as bearing on that view and contradicting it.

Judge Neilson—I cannot receive it, I think, Sir; Mr. Shearman, that exhausts the argument?

Mr. Evarts—Our exceptions have been noted, I think.

Judge Neilson—Yes, Sir; generally they are. I say generally, if there is any omission of an exception where an objection has been made. I wish to say generally that, if there is any casual omission of the exception in connection with any objection, it can be entered hereafter.

Mr. Beach—I hope not. I trust your Honor will not give the party an exception which he does not take. I am seriously opposed to that rule in the settlement of cases, and I think the party should take his exception on the trial.

Mr. Evarts—His Honor means where the line of exception is already indicated, I suppose.

Mr. Beach—I don't know what he means, but I object to that rule.

Mr. Evarts—Now, have we your Honor's ruling upon this general proposition of ours—that the introduction which the plaintiffs had given to this story this publication, entitles us to read such parts of it, irrespective of the question, whether they, by themselves, are admissible. I understand your Honor necessarily to rule against us on that view.

Mr. Beach—I understand his Honor to have ruled that you are at liberty to give in evidence any part of this publication which tends to qualify or explain the portion of it to which we referred in our evidence. That is the rule, at any rate, for which we contend, and we ask no other rule.

Judge Neilson—Well, I ruled at first, that this statement was brought in in a sense, to a certain degree, by the evidence which has been given on the part of the plaintiff with reference to the pistol scene, and with reference to the story, and we have heard so much of the story as we supposed applied to the matter referred to by that evidence. I think that is all the ruling that is called for.

Mr. Morris—We have heard just the portion that does not apply to that.

Mr. Fullerton—Your Honor forgets that everything in relation to the pistol scene was called out in the cross-examination, and not upon the direct at all.

Judge Neilson—It may be so. I think we will proceed now.

Mr. Evarts—Now, my learned friend has just laid down a rule that, I think, would have admitted all the evidence that your Honor has excluded; that is to say, that we have a right to read any part of this that qualifies or affects the part that they have introduced in evidence.

Judge Neilson—My intention was to let you read any part of this which would point the evidence given on the part of the plaintiff, and show what it was that was referred to—statements, story, or whatever.

Mr. Evarts—That we understand, and we submit to your Honor's ruling, that, in your Honor's disposition of the matter, the parts that you have included do, and the parts that you have excluded do not, come within that rule. Now, I wish to preserve the exception on the question of our right to read all parts of this statement, by reason of the plaintiff's introduction of the part already given.

Judge Neilson—I could not hold that, and you take an exception on that.

Mr. Evarts—We take an exception.

#### DETAILS ABOUT THE TRUE STORY.

Mr. Tracy—Did you ever read or hear read a paper which Tilton prepared, which he calls his "True Story"? A. I don't know that I heard the whole of it, Sir, read—that I read the whole of it or heard the whole of it read. I don't recollect; read portions of it, at all events.

Q. Well, did you hear the most of it read? A. Perhaps I did—I don't—

Q. Well, did you? Perhaps you did, is no answer at all. A. I am trying to give a correct answer.

Mr. Tracy—I submit that the witness ought to answer the question that I put to him.

Judge Neilson—What is your best recollection about it? A. Well, will you put the question? I am trying to give—  
[Question read by THE TRIBUNE stenographer.]

A. My recollection is that I either read or heard the most of it.

Q. Now, will you say that you did not either read or hear read the whole of it? A. I should say that my recollection—my best recollection is that I did not read or hear read the whole of it, Sir.

Q. When was that story prepared—that statement prepared? A. My impression was, Sir, in the latter part of December, '74. If you will allow me to state when I think I heard the most of it read, it was one evening when you were present in my study, when you went to sleep and was not quite interested—

Mr. Evarts—That is not an answer to any question.

The Witness—Well, I am only trying—

Mr. Fullerton—It gives the time, however.

Mr. Beach—It is a very proper way to fix it by reference to an event.

Mr. Evarts—The difficulty is that he had not been asked to fix it.

Mr. Fullerton—Yes, he had been asked to fix the time.

Mr. Tracy—Was that story prepared and read as Mr. Tilton's answer to the Woodhull publication? A. Was it prepared—may the stenographer read the question?

Judge Neilson—Was it prepared and read as an answer to the Woodhull publication?

Mr. Fullerton—That we object to; he is asking for the operation of some mind other than his own.

Judge Neilson—Was it said whether or not it was prepared as an answer to the Woodhull statement?

Mr. Tracy—I accept the amendment.

The Witness—I do not think that that was said.

Mr. Tracy—What do you say? A. I don't remember that that was said.

Q. Wasn't the statement presented to you by Mr. Tilton as his proposed answer to that publication? A. I don't recollect its being presented as an answer to that publication, Sir.

Q. Wasn't it presented to you as a statement which he had prepared, and which he proposed to publish in consequence of the Woodhull publication? A. My recollection is something like that was said, Sir, in consequence of it.

Q. Do you remember what were the subjects of which that story treated? A. There is only one part of it, Sir, that I distinctly recollect; one incident, which I described here; I don't remember what it distinctly treated of.

Q. Well, answer my question. Do you remember the subjects of which that story treated? A. Not all of them; no, Sir.

Q. Not all of them? A. No, Sir.

Q. What subjects do you remember that it did treat of?

Mr. Fullerton—That is objected to.

Mr. Tracy—That is what was called "The True Story" by Mr. Tilton.

Mr. Fullerton—We object to it.

Judge Neilson—Have you the paper in court?



Mr. Tracy—We have not ; we have given them notice to produce it.

Judge Neilson—Was the thing published? A. No, Sir; it was not published.

Judge Neilson—Well, unless you produce it, they have a right to inquire into the contents, of course. Do you call for the paper?

Mr. Tracy—We do, and they fail to produce it.

Judge Neilson—If they fail to produce it, or account for it, you have a right to give the contents of it.

Mr. Fullerton—We have already avowed the fact that the paper was destroyed. It is not in existence.

Mr. Evarts—Avowed it here in the trial?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Very well, that gives us a right to go into its contents.

Mr. Tracy—Now, will you answer my question? I will repeat it. What were the subjects of which that story treated? A. I don't recollect all, Sir, of the subjects.

Q. What subjects do you recollect of which it treated? A. The relation between Mrs. Tilton and Mr. Beecher.

Q. Did it also treat of Mr. Tilton's relation with Mr. Bowen and the causes which led to his dismissal? A. I don't recollect, Sir, whether it did or not. I have a distinct recollection of the incident which I narrated before from this stand, and that is all.

Q. Did it treat of Mr. Tilton's relations to the Woodhulls and their publications? A. I don't recollect that.

Q. Do you recollect whether or not it referred to the publication of the Woodhulls? A. I don't recollect that, Sir. I will tell you exactly what I do recollect—

Q. How long a paper was it? A. Quite long; I forget how long.

Q. Very long, wasn't it? A. What do you mean by very long?

Q. Well, wasn't it more than one hundred foolscap pages? A. I don't recollect whether it was or not.

Q. Didn't it make as thick a manuscript as that? [Showing a manuscript to witness]. A. As thick as that, no.

Q. That? A. No.

Q. That? A. No; I don't think it did.

Q. How thick was it? A. Well, I don't think it was one hundred pages. You heard it read. I don't know how much.

Mr. Evarts—I ask that that be struck out; the conversations of the witness with the counsel are not admissible.

Judge Neilson—Yes.

The Witness—Excuse me.

Q. Did he carry it in a black cover? A. It was wound up—rolled up; yes, Sir.

Q. Well, Sir, what did it say—did it contain any statement from Mrs. Tilton concerning her relation with Mr. Beecher? A. My impression, Sir, is that the letter which she wrote to Dr. Storrs, or the purport of that letter, was in the statement.

Q. Yes, Sir; that is, it stated in substance, then, that, "prompted by my duty, I informed my husband that Mr. H. W. Beecher, my friend and pastor, had solicited me to be a wife to

him, together with all that implied." A. I think that is it, Sir.

Q. That was the substance of the statement; did that paper contain any other statement of her relations with Mr. Beecher than contained in that paragraph? A. I don't recollect that it did, Sir.

Q. Did the paper also contain a copy of what you now call the letter of contrition? A. I don't recollect that; I don't think it did; my impression is that it did not—not all of it.

Q. Did it contain any part of it? A. I think very likely it contained some part of it.

Q. Did it? A. I don't recollect; I am trying to answer the question truthfully.

Q. Don't you remember that that true statement contained a copy of all or of a part of what you call the letter of contrition? A. I don't really recollect.

Q. And that it was introduced into that paper as proof of the charge which Mrs. Tilton made against Mr. Beecher? A. I don't recollect that, Sir; no; I have stated all that I recollect.

Q. Was there any charge of adultery between Mr. Beecher and Mrs. Tilton set forth in that paper? A. There is nothing, Sir, except what I have narrated; that is all that I recollect of.

Q. Do you not remember that, after quoting this charge of Mr. Tilton against Mr. Beecher, that Mr. Tilton, in that statement, proceeded to eulogize his wife for the delicate manner in which she had resisted the advances of her pastor? A. I don't recollect that, Sir.

Q. You don't? A. No.

Q. Do you remember whether he said anything on the subject? A. I really don't, Sir.

Q. It may have contained it then, for aught you remember? A. If I had any recollection about it, Sir, I should state it. I haven't.

Q. You have no recollection on that subject. On Mr. Tilton's meeting Mr. Beecher first after the publication of the Woodhull scandal, were you present at that meeting? A. I believe I was, Sir, on the election day. I recollect that as the first, that is what I mean to say, General.

Q. First you saw them? A. Yes, Sir.

Q. Do you remember that Mr. Tilton grasped Mr. Beecher with both his hands—grasped Mr. Beecher's hand with both his, and shook it heartily, and expressed his sympathy with Mr. Beecher for this publication? A. I recollect that he shook hands with Mr. Beecher, Sir.

Q. Didn't he grasp Mr. Beecher's hand with both his and shake it earnestly, and express his profound sympathy with him on account of this scandalous publication? A. He shook his hand and expressed his profound regret for the publication.

Q. Didn't he shake Mr. Beecher's hand with both of his? A. Well, I don't remember whether he used both hands or not, Mr. Tracy.

Q. You remember that he shook hands? A. Yes, I remember that.

Q. Haven't you said that he took Mr. Beecher's hand in both of his, and shook it heartily and expressed his profound regret and sympathy? A. I don't know that I ever did.

Q. Didn't you tell the Rev. Mr. Halliday so at your house soon after this Woodhull publication? A. I don't recollect that I did.

Q. Will you say that you did not? A. If I had any recollection about it I would make the statement according to my recollection, but I have not.

Q. You mean by that that you have no recollection on the subject? A. As to whether I told Mr. Halliday or not, as to whether your question :—that is it, Sir.

Mr. Fullerton—That is it! A. Yes, Sir; that is the way.

Q. Now, do you not know that Mr. Tilton was unwilling to make any other reply to the Woodhull statement than that which was contained in the "True Story?" A. That he was unwilling to make any other reply?

Q. Yes. A. No; if you will allow me to explain—

Q. No, answer my question; do you not know that fact? That he was unwilling? I could not say that I did know that he was unwilling to make any other statement, Sir.

#### TILTON ALWAYS READY TO EXONERATE HIS WIFE.

Q. Was he not willing to make a statement which should exonerate his wife from the charge of adultery, but which should, at the same time, put Mr. Beecher in the position of having solicited it?

The Witness—Will the stenographer read that question?

[Question read by THE TRIBUNE stenographer.]

A. I don't think I could say yes or no to that question, and answer it positively. He was willing to clear his wife, but I don't remember that he was willing to put Mr. Beecher in the position of having solicited. I don't think—

Q. You remember that he was willing to make a statement which should exonerate his wife from the charge of adultery? A. He seemed to be always willing to do that at any time.

Q. Make a public statement which should declare that she was not guilty of adultery? A. I don't know whether a public statement or not; he was willing to make a statement.

Q. Well, do you know that that statement of his called the "True Story;" do you not know that it was prepared by him with a view to publication? A. Yes, Sir; I think, Mr. Tracy, if you will allow me, I think I can answer your—

Mr. Tracy—You have answered my question; at least, I accept it as a full answer.

Mr. Beach—No, Sir; if he wants to add anything to it to qualify it or explain it—

Mr. Tracy—That depends on what it is.

Mr. Beach—Then you had better hear it.

The Witness—I have a recollection of an interview—

Mr. Tracy—Now, I have not called on you for an interview; I have asked a simple question, whether that statement was prepared by Mr. Tilton with a view to publication. He says it was. I submit that is an answer to the question.

Mr. Beach—If the witness wishes to change that question, or correct an answer which he has made inaccurately to a previous question, he has a right to correct it.

Mr. Tracy—Oh! if he has made a mistake—

The Witness—My only purpose was to give a full statement

of the truth. My only purpose was to tell the truth fully about it; that is all the thought that was in my mind.

Judge Neilson—The objection which the counsel made was that you seemed to be proceeding to refer to some other occasion about which he had not inquired.

The Witness—I will tell your Honor precisely what I wanted to do—

Mr. Evarts—Well, I submit that our first duty is with this question. The point is this: not that it is permissible for the witness to explain; that we understand; but it does not form a part of our cross-examination. When he has fully answered the question put to him, it is for the other side to take up the examination.

Mr. Beach—Suppose he wishes to correct a matter—

Mr. Evarts—That is another matter.

Judge Neilson—He could correct, but he could not refer to another and independent occasion.

The Witness—No, Sir. Mr. Tracy asks me whether Mr. Tilton was not willing to make a statement which should clear his wife and yet leave Mr. Beecher subject to the imputation of having improperly solicited. Now, I answered that question as well as I could; but I remember an interview between Mr. Beecher and Tilton in which Mr. Tilton was perfectly willing that Mr. Beecher should take the responsibility of denying, and the cards were prepared for that purpose.

Judge Neilson—That is an occasion as to which he had inquired.

The Witness—I understood his question to cover all occasions that I knew about.

Mr. Tracy—Oh! no.

The Witness—Yes, Sir.

Mr. Tracy—There is no question about what Mr. Tilton was willing to do. He is answering to what Mr. Tilton was willing Mr. Beecher should do. My question was, what statement Tilton was willing to make.

The Witness—If you will allow the stenographer to read the question.

THE TRIBUNE stenographer [reading]:

Was he not willing to make a statement which should exonerate his wife from the charge of adultery, and which should at the same time put Mr. Beecher in the position of having solicited it?

The Witness—Now, your Honor, at the time that the publication of the statement was talked about, there was this interview that I have a recollection of, or an impression concerning, and at which Mr. Tilton was perfectly willing that his wife—

Mr. Tracy—I object. I have not asked him what he was willing Mr. Beecher should do. I have asked the simple question, whether Mr. Tilton was unwilling to make any statement himself except one, which, while it exonerated his wife, put Mr. Beecher in the position of having solicited her.

Judge Neilson—But your question does not point to any particular occasion; and, therefore, I think we will take the answer, and see what it is.

Mr. Tracy—Excuse me a moment; the witness is not proceeding to answer my question as to what statement Mr. Tilton



was willing to make ; but he is proceeding to state what Mr. Tilton said he was willing Mr. Beecher should do.

The Witness—They were then discussing the publication of the statement, your Honor.

Mr. Tracy—My question is this : What statement was Mr. Tilton willing to make?

Judge Neilson—Now, can you answer that more fully than you have—what statement Mr. Tilton was willing to make? A. Mr. Tilton had prepared the statement to which I have referred, called the "True Story," I think that was ; and he was perfectly willing to forego the publication of it, and leave Mr. Beecher and Mrs. Tilton to deny. Your Honor, that is what I want—

Mr. Tracy—I did not ask that.

Judge Neilson—I think that is embraced in the question.

Mr. Tracy—Your Honor will note my objection. I object to the last part of the answer, what he was willing Mr. Beecher and Mrs. Tilton should do, as not responsive to my question.

Judge Neilson—I don't think that bears upon it.

#### THE COMPLAINING FRIEND LETTER.

Q. Do you remember the publication of Mr. Tilton's letter to "A Complaining Friend?" A. I remember of such a publication; yes, Sir.

Q. Did you know of it before it was published? A. No, Sir.

Mr. Morris—That has all been gone over before.

Mr. Tracy—I don't remember that it has.

Q. He published that without your knowledge? A. Yes, Sir; he published it without my knowledge.

Q. Did not that bring out what was known as another emergency in this case—the publication of that card? A. I don't recollect now whether it did or not; I don't think it did bring on another emergency.

Q. Did you see Mr. Beecher about it? A. Yes, Sir; I had an interview with him about it.

Q. A consultation? A. It was an interview; it was talked about.

Q. Did you still advise silence, notwithstanding that publication? A. I thought no reply was necessary.

Q. Didn't Mr. Beecher think that a reply was necessary—that Tilton having spoken in this letter to "A Complaining Friend," didn't Mr. Beecher then think that a reply was necessary? A. I think not.

Q. You think not? A. I think not.

Q. You know you advised against it? A. I adhered to the policy of silence, after a full consideration of all the interests that were involved.

Q. Don't you remember that you and Mr. Beecher had an interview on the subject of that publication, when Mr. Beecher told you that he thought that letter made it necessary for him to deny that statement? A. No, Sir.

Q. You don't remember that? A. No, Sir.

Q. And that you advised silence? A. No, Sir.

Q. Do you remember of having seen in Mr. Beecher's hands, about that time, a note addressed to you containing a denial of the Woodhull charge, for publication? A. No, Sir.

Q. You do not remember it? A. No, Sir.

Q. Never saw it? A. I don't recollect that I ever saw such a paper.

Q. Did Mr. Beecher tell you he had prepared one? A. I don't recollect that he ever did; I don't think he did.

Q. [Handing paper to witness.] Now, Sir, I hand you that, and ask you if, after the publication of the letter to a "Complaining Friend," Mr. Beecher did not present you that and consult with you in regard to the propriety of its publication? A. No, Sir; I don't think I ever saw that letter in my life; I don't think I ever did.

Q. Turn over and see the card? A. No, Sir; I think this is the card that Mr. Tilton—I never saw it—I think that is the card Mr. Tilton was willing—

Mr. Evarts—You say you never saw it; that is enough.

The Witness—I beg your pardon.

Mr. Evarts—Did you see it? A. Never saw it.

[Paper marked for identification "Exhibit D, 41."]

Mr. Fullerton—Let me see that paper.

Mr. Evarts—It is not in evidence.

Mr. Fullerton—I ask to see that paper.

Judge Neilson—You will have to wait until it is put in evidence.

Mr. Fullerton—I beg your pardon; I am not compelled to wait until that time; we are entitled to see it now; it has been placed in the hands of the witness, and he has been asked a question in regard to it. That entitles us to look at it.

Judge Neilson—[To Mr. Evarts.] Is there any objection to show it to them?

Mr. Evarts—As a matter of private gratification to the counsel we will permit him to look at it; we will be very courteous. But, in the regular course of proceedings, it seems to us plain, it is a paper they are not entitled to see until we put it in evidence.

Judge Neilson—I think you can hold it until you offer it in evidence, the witness not having said as yet that he saw it.

Mr. Evarts—We therefore have no right to offer it in evidence?

Judge Neilson—No, Sir.

Mr. Fullerton—But I have a right, on the re-direct examination, to call the attention of the witness to the paper.

Mr. Evarts—No doubt.

Mr. Fullerton—Then I have a right to look at it.

Mr. Evarts—Then you will have.

Judge Neilson—Then you agree, gentlemen.

Mr. Fullerton—We do not agree, if your Honor please. We agree that I have a right to see it before I re-examine the witness. I claim that I have a right to see it now. They say I have a right to see it then.

Judge Neilson—You will have a right to see it, if the witness had made a material answer that he saw it.

Mr. Fullerton—But that they do claim, the answer he made is material, that he never saw it before.

Mr. Evarts—We do not. We would be very glad to put it in evidence, but our difficulty is, we have no right to do so.

Judge Neilson—When he (Mr. Fullerton) calls attention to it on the re-direct, he will have a right to see it.

Mr. Evarts—We don't offer to read it. We would be glad to read it now.

Mr. Fullerton—I will show your Honor an authority as proof that I have a right to see it now.

Judge Neilson—It may be that you are right. If it was more material, perhaps I should remember the rule better.

#### SUGGESTIONS OF A BLACKMAILING SCHEME.

Q. I think you have stated that you remembered the publication of the Tilton letter to Mr. Bowen of January 1st, in which he recites Mr. Bowen's charges of adultery against Mr. Beecher. That was published in a Sunday newspaper of April 20, 1873, was it not? A. I think it was published in *The Eagle*—yes, Sir, or *Sunday Press*. I didn't see it in *The Sunday Press*. My recollection is I saw that letter published in *The Eagle*. I will see.

Q. It is *The Golden Age* article, which was published, and the "tripartite agreement," which recited the letter of Mr. Tilton to Mr. Bowen, written January 1st, 1871, in which he recites the charges of adultery which he (Bowen) had made against Beecher at the interview on December 26 at Mr. Bowen's house? A. I don't recollect having seen all this. It may be I was told; my impression is I was told that in *The Eagle*. It strikes me I was out of town when it appeared, but I was told of the publication of the letter of Mr. Tilton to Mr. Bowen in *The Eagle*.

Q. Taken from a Sunday newspaper? A. I don't know whether I was told it was taken from a Sunday newspaper.

Q. But didn't you learn it was first published in a Sunday newspaper in Brooklyn? A. I think I learned that subsequently. The point I learned was that this letter of Mr. Tilton to Mr. Bowen was published, and I saw Mr. Bowen about it.

Q. That was this first publication? A. I suppose it was.

Q. You know it was? A. I don't recollect of any other now.

Q. As far as you know, it was? A. That is all that I recollect about it now; I don't think it was published.

Q. Do you know how *The Press* got hold of that letter? A. I do not.

Q. Did you have anything to do with *The Press* getting possession of that letter to publish it? A. No, Sir.

Q. Don't you know that that *Golden Age* article as published, when first published in Brooklyn was published from a copy that came from Mr. Tilton? A. I don't know anything about that.

Q. That was given by him to John W. Harman? A. I don't know that; no, Sir.

Q. Did Mr. Tilton ever talk with you about how it came to be published? A. I think I asked him how it came to be published, and he told me he did not know.

Q. I did not ask you that; he told you he did not know? A. Yes, Sir; he told me he did not know.

Q. Did you ask him how it happened that anybody got hold of the proof-sheets of that article that were struck off in *The Golden Age*? A. I asked him about that.

Q. How did he account for it? A. I don't recollect how he accounted for it; he did not know anything about it, my recollection is; he will probably be able to tell you that.

Q. That publication brought on another emergency in this matter, did it not? A. It was talked of.

Q. And created a good deal of excitement, didn't it? A. I believe it did.

Q. You saw Mr. Beecher at once about it, did you not? A. Yes, Sir; I think I saw Mr. Beecher about it. I think he came to see me about it.

Q. And created a good deal of excitement, you say? This publication of the letter from Mr. Tilton to Mr. Bowen, reciting Mr. Bowen's charges of adultery against Mr. Beecher, preceded the publication of the tripartite agreement, did it not? A. Yes, Sir, it preceded it?

Q. Will you tell us how long it was after you first learned of the publication of this letter to Mr. Beecher, or before Mr. Beecher had promised to give Mr. Tilton \$5,000? A. How long it was before that?

Q. Yes, Sir? A. When was the \$5,000 given? I think that was May 2d, was it not?

Q. Yes, Sir; May 2d, 1873? A. How long it was before that?

Q. Yes, Sir; how long the publication of this letter of Mr. Tilton's to Mr. Bowen, reciting Mr. Bowen's charges of adultery against Mr. Beecher—how long it was that that was published before Mr. Beecher had agreed to pay you \$5,000 for the use of Mr. Tilton? A. That was published April 20th, and he gave me the \$5,000 on May 2d.

Q. When did he agree to give it? A. I really do not recollect the day when he agreed to give it.

Q. How long do you think it was after its publication? A. If I recollected it I should have stated it to you. It did not have anything to do with this publication.

Mr. Tracy—I did not ask you that. That we will argue to the jury. I move that that be stricken out.

Judge Neilson—Strike that out. The answer of the witness and your [Mr. Tracy's] observations both go out.

Mr. Tracy—Do you remember how long it was after this publication that you had your first talk with Mr. Beecher about money for Mr. Tilton? A. I don't think it was after it at all; at the present moment I don't remember.

Q. Do you remember whether it was after it? A. I think it was not after it.

Q. You think it was not after it? A. I think not; I cannot fix the date. If you have got anything that will fix the date I will try and tell you, General.

Q. How many talks did you have with Mr. Beecher about the \$5,000? A. I had several.

Q. When was the last one before you got the money? A. Immediately before I got it, on the road down to the bank.

Q. Did Mr. Beecher used to say to you at times that he heard that Mr. Tilton was talking privately against him? A. No, Sir; I don't recollect that he did.

Q. You never recollect any such interview as that? A. That Mr. Tilton was talking privately against him?—no, Sir.

Q. Don't you know that you frequently assured Mr. Beecher that the reports that he heard that Mr. Tilton was talking about him were untrue? A. The only recollection I have about it is in the first part of 1871, just before the Mrs. Morse letter was brought to me, that then Mr. Beecher did say something to me about it. Since then I don't recollect about it.

Q. Didn't you often say that you would investigate such



rumors, and make reports to Mr. Beecher of what the facts were? A. I don't—such rumors in connection with Mr. Tilton's name, you mean?

Q. Yes, Sir. A. There were rumors that people were talking of.

Q. That Mr. Tilton was talking against Mr. Beecher privately? A. No, Sir; I don't recollect that.

Q. Or that he was talking against him? A. No, Sir; that others were talking against him, he wrote me a letter once.

Q. The question was about Mr. Tilton. A. No, Sir; I don't recollect that at the present moment.

Q. You don't recollect to have ever undertaken to trace up those reports, and afterwards reported to Mr. Beecher that they were unfounded, and that your investigation had shown you Mr. Tilton had not been talking about him? A. There may have been some such thing, but I don't recollect it at present.

Q. [Handing letter to witness.] Will you look at that letter? A. Yes, Sir.

Q. Is that your writing? A. Yes, Sir; that is my writing.

Q. Will you fix the date of it? A. I will try to. I will read it and see. [To Mr. Tracy.] Can you read one word *here* in this letter, Mr. Tracy?

Mr. Tracy—I don't think I could; I would not like to undertake it. It is your handwriting isn't it? A. Yes, Sir.

Mr. Fullerton—But he wrote it for Mr. Beecher to read.

Judge Neilson—Perhaps the stenographer can read it.

Mr. Tracy—Yes, Sir; it begins "Dear Friend;" perhaps we can read it.

The Witness—This was some time, I suppose, in the Greeley campaign?

Mr. Tracy—I suppose so.

The Witness—I cannot read the whole context.

Mr. Shearman [reading]:

T.'s statement out of which Cleveland has tried to make mischief, was passed upon your remark at our table that you would cease to be editor of *The Christian Union* when it condescended to personal attacks on Mr. Greeley.

His remark was: "Mr. B. will cease to be editor when the paper personally attacks G." C. said, "What do you mean by that?" I replied your chief knows.

You may rest assured that any story hereafter brought to you representing T. in any other than a friendly spirit toward you is a misrepresentation or misapprehension, and I want you to treat it accordingly; then no mischief can be done. Cleveland tried to pump Theodore and also yourself.

I hope you have left no impression unfriendly to T. on C.'s mind.

Now, again, all is right, and I pray God that it may remain so. Right everywhere. Yours, F. D. M.

You can readily understand how C. gave to T.'s statement the coloring of the floating stores.

The Witness—I think I can fix the date of it.

Q. Who are C. and T.? A. Cleveland and Tilton. I will try to fix the date for you as near as I can.

Q. When do you think it was? A. I think it was on the evening Mr. Tilton made his speech at the Academy of Music in favor of Greeley, because Mr. Beecher and Mr. Tilton were both with me dining with some friends, and I think it was about that time

Q. That was the time the conversion of Mr. Beecher occurred? A. Precisely so; it was a short time after that.

Q. That was entirely a friendly dinner, was it not? A. It seemed to be.

Q. The company understood at that dinner that Mr. Beecher was for Mr. Grant and Mr. Tilton was for Mr. Greeley? A. I think they did; yes, Sir.

Q. And it was a friendly dinner and a friendly talk? A. Seemed to be.

Q. But the occasion of writing this letter was some time after that? A. Not a great while; I don't fix it as the beginning of the season for the letter.

Q. Was that the only instance where you had followed up reports that had reached Mr. Beecher of Mr. Tilton's unfriendly remarks, and assured him that his information was entirely a mistake, and that Mr. Tilton was entirely friendly?

Mr. Fullerton—I object to the form of that statement. He asks if that is the only instance of that kind. That is not an instance of that kind.

Mr. Tracy—Certainly it is, if there is anything in the letter.

Judge Neilson—I think he may answer that.

Mr. Fullerton—It is a misconstruction of the letter.

The Witness—Will the stenographer read the question?

[THE TRIBUNE stenographer read the question.]

The Witness—I don't recollect.

Judge Neilson—You mean you don't remember any other occasion? A. I don't remember any other question, and didn't recollect this until it was brought to my attention.

#### MOULTON'S ANSWER TO THE LETTER OF RESIGNATION.

Mr. Tracy—You have spoken of seeing in Mr. Beecher's hands what you called his resignation on the evening of the 31st of May, in your house? A. Yes, Sir.

Q. That was Saturday evening, was it not? A. I think that was the evening I saw it.

Q. 31st of May, 1873? A. I think that was the evening I saw the resignation.

Q. And it was the next day that you received the letter that has been given in evidence, dated June 1st, 1873? A. I received a letter dated June 1st, 1873.

Q. Did you see Mr. Tilton on that Sunday? A. I think very likely he was at the house; yes, Sir; I believe he was at the house.

Q. What time did he come there? A. In the afternoon, I think.

Q. How late in the afternoon? A. I don't know; somewhere about from twelve to three; about dinner time.

Q. What time of day did you receive this letter from Mr. Beecher, do you know? A. In the morning early.

Q. How early? A. Before I was up.

Q. Does it always follow that is early on Sunday morning? A. Not always; but it was about nine o'clock, I should think, I got the letter; it was before half-past ten; if you want me to fix it, I will be able to fix it accurately.

Q. Did you answer that letter? A. Yes, Sir.

Q. What time of day did you answer it? A. Right away, Sir; in bed.

Q. You answered it in bed, you think? A. Yes, Sir; my wife brought me the paper to answer it with; I think I recollect that.

Mr. Evarts—The details are unimportant, what your wife did or didn't do.

The Witness—Your instructions to me, Mr. Evarts, have seemed to be so peculiar to the truth itself, that I beg pardon for trying to tell all the truth.

Mr. Tracy [handing letter to witness]—Is the letter now presented to you your answer to Mr. Beecher's letter of Sunday morning, June 1st, 1873?

Mr. Shearman—You are satisfied that is your handwriting? A. Yes, Sir; I am satisfied it is my letter, with the exception of the words that are underlined; I don't know that that makes much difference; I don't think I underlined it.

Mr. Evarts—You mean the underscoring? A. Yes, Sir; the underscoring may not be mine; the letter is mine with that exception. Can you tell, Mr. Shearman, whether that underscoring is mine or not?

Mr. Shearman—Yes, if you want me to tell you.

Mr. Beach—He cannot tell you that.

Mr. Evarts—It is presumptively your underscoring, and that erasing is yours, is it not? A. I didn't say that. [The witness refers again to the letter.] Yes, Sir, I think that was the beginning of the letter.

Q. And you yourself crossed it out and wrote the rest? A. I think very likely I did. I don't remember scratching it out.

Mr. Evarts—I will begin the letter, as you did, with the part that is scratched out first.

MY DEAR FRIEND: You know I have never been in sympathy with the mood out of which you have often spoken as you have written this morning. I know you can stand if the whole case was published to-morrow, and in my opinion, it shows a selfish faith in God too—

And then the writer stops and erases and begins again.

Mr. Shearman—I beg your pardon, if your Honor please. As this letter was originally published, it was published correctly, but in re-publishing it in this book, there seems to be an erasure, and I am afraid Mr. Evarts cannot read this writing, and I will therefore read it. [Reading:]

SUNDAY, June 1, 1873.

MY DEAR FRIEND: You know I have never been in sympathy with the mood out of which you have often spoken as you have written this morning. If the truth must be spoken, let it be. I know you can stand if the whole case was published to-morrow, and in my opinion it shows a selfish faith in God—

Mr. Evarts—The rest is right.

Mr. Shearman—The rest is right.

Mr. Evarts—Then he begins:

SUNDAY, June 1st, 1873.

MY DEAR FRIEND: Your letter makes this first Sabbath of Summer dark and cold like a vault. You have never inspired me with courage or hope, and if I had listened to you alone my hands would have dropped helpless long ago. You don't begin to be in the danger to-day that has faced you many times before. If you now look it square in the eyes it will cover and shrink away again. You know that I have never been in sympathy with, but that I absolutely abhor, the unmanly mood out of which your letter of this morning came. This mood is a reservoir of

mildew. You can stand it if the whole case were published to-morrow. In my opinion it shows only a selfish faith in God to go whining into heaven, if you could, with a truth that you are not courageous enough, with God's help and faith in God, to try to live on earth. You know that I love you, and because I do I shall try and try and try as in the past. You are mistaken when you say that Theodore charges you with making him appear as one graciously pardoned by you. He said the form in which it was published in some of the papers made it so appear, and it was from this that he asked relief. I do not think it impossible to frame a letter which will cover the case. May God bless you. I know he will protect you.

FRANK.

Mr. Tracy—Now, just previous to June 1st, the "tripartite agreement" had been published, had it not? A. Exactly; yes, Sir.

Q. When was it published? A. Published, I think, on the 30th or 29th of May—the 30th of May.

Q. On the next day, June 2d, you got Mr. Beecher to publish the card which has been put in evidence, exonerating Mr. Tilton from the suspicion of being the author of Mr. Bowen's charge, did you not? A. I don't think I said that. On Sunday night I submitted to Mr. Beecher a card, the substance of which he published the next day in *The Eagle*.

Q. That was June 2d? A. Yes, Sir; that was June 2d; there is the original.

Q. And which has been given in evidence here? A. No, Sir; it has not.

Mr. Morris—No; the one that was admitted was not. Here it is. [Handing a paper to Mr. Tracy.]

Mr. Evarts—We do not allude to anything not in evidence. There was something published.

Q. When was the card that was published agreed upon? A. Sunday night, I believe.

Q. Sunday night? A. Sunday night; yes, Sir.

Q. The card that was published? A. Yes, Sir.

Q. Where was that agreed upon? A. In my study, I think.

Q. Mr. Beecher's threat to resign led Mr. Tilton, did it not, to forego the publication of the card which he had threatened to publish on Saturday? A. No, Sir; I don't think it had anything to do with it.

Q. He didn't publish it, did he? A. He was going to publish it on Monday. He was not going to publish it on Saturday.

Q. The card he was going to publish on Saturday, he didn't publish it, did he? A. No, Sir.

Q. When was the interview between you and Mr. Tilton when you first were informed that he intended to publish that card? A. Saturday morning, I think.

Q. When did you learn that he had given up publishing that card? A. I think it was Sunday afternoon; I didn't understand that he had given up publishing the card, if you please.

Q. I ask you when you did learn it? If it was not Sunday afternoon when was it? A. Monday.

Q. You learned on Monday he did not intend to publish that card? A. Yes, Sir, I think it was Monday.

Q. And was not that after Mr. Beecher's threats to resign? A. That was after Mr. Beecher's threats to resign; yes, Sir.

Q. And after you had communicated that threat to Mr. TR-



ton? A. I think it was; yes, Sir. I will tell you about the card if you want me to.

[Paper marked Exhibit D. 43.]

Q. Now, I ask you this question: was the card which was published on January 2d prepared by Mr. Tilton? A. I think the original draft of it was; yes, Sir—not as published; it was published with an alteration from that original draft, but the draft which Mr. Tilton prepared I submitted to Mr. Beecher, and he made one to suit himself, which was substantially that card.

Q. Now, the card that you say you dictated to Mr. Carpenter after the Bacon letter, did you dictate that from any paper? A. No, Sir.

Q. Had it been reduced to writing previous to your dictating it? A. Never.

Q. Where did you dictate it? A. I think it was at Delmonico's, in the front room, on the second or third floor of Delmonico's.

Q. Were you dining there together? Which Delmonico? A. Chambers street. No, I did not get there in time to dine, I recollect that.

Q. What time was it? A. It was in the afternoon.

Mr. Evarts—Who were together? A. Mr. Tilton, Mr. Carpenter, and myself were together.

Mr. Tracy—Mr. Tilton, yourself, and Mr. Carpenter were together at the time that card was dictated? A. Yes, Sir.

Q. Were you there for the purpose of a meal? A. I came up there to get my dinner. Dinner was over. I promised to go there to dine.

Q. Did the two come with you? A. No, Sir, they were there before me.

Q. They had had their dinner? A. Yes, Sir.

Q. Were you to meet them at dinner? A. I believe I was.

Q. You met there in pursuance of an appointment, you being too late for dinner? A. Yes, Sir; I believe so.

Q. And was this card, which you proposed to be published, or this statement which you proposed Mr. Beecher should publish, in reply to the Bacon letter? A. Any answer to the Bacon letter? No, I did not propose he should publish it—to speak it from his platform.

Mr. Tracy—That is what I call publishing.

The Witness—Yes, Sir.

Mr. Tracy—That was prepared at Delmonico's, Mr. Tilton, you and Mr. Carpenter being present? A. Yes, Sir, I dictated it. All the dictation is mine; every word of it.

Q. How many interviews had you had with Mr. Tilton after the publication of the Bacon letter, and before you dictated this card? A. Not many.

Q. How many? A. I don't recollect. What is the date of the publication of the Bacon letter?

Q. June 25th I believe. A. What day of the week was it? This was Friday. I think Mr. Beecher was to have a prayer meeting that night; that is one way I fixed this, and I think it was the week of the publication of the Bacon letter; I think so.

Q. Do you know what day *The Golden Age* goes to press? A. No, Sir; I don't remember the day; I don't remember that,

but my impression is that it was Friday of the week of the publication of the article in *The Golden Age*.

Q. You saw it in the morning papers on Thursday morning? A. I don't recollect what day it was.

Q. Don't you recollect *The Golden Age* went to press on Wednesday night? A. I don't know that.

Q. And was distributed on Wednesday night? A. I saw you immediately after, and you can fix— [Laughter.]

Mr. Tracy—I did not ask you that.

The Witness—I only suggest how I can fix the date. I want to fix the date accurately. I didn't mean to make any fun then, Mr. Tracy. I will tell you the thought that was in my mind.

Mr. Tracy—I don't want that. You do very well when you answer my questions.

The Witness—I would like to state exactly what I had in my mind.

Judge Neilson—If it was necessary. We assume it was something proper, of course.

The Witness—He (Mr. Tracy) asked me to fix the date, and I wanted to fix it; and, if your Honor will allow me, I will state how I wanted to fix it.

Judge Neilson—It was an effort on your part to fix the date in that particular way?

The Witness—Precisely, Sir.

Mr. Evarts—This topic we are now through with, and your Honor will observe that it is just one o'clock, our hour for taking recess.

Judge Neilson [to the Jury]—Gentlemen, you will please be in your seats at two o'clock.

The Witness [to Judge Neilson]—May I step down, your Honor?

Judge Neilson—Yes, Sir.

The Court met at 2 p. m., pursuant to adjournment. Francis D. Moulton was recalled, and the cross-examination resumed.

Mr. Tracy—Have you seen that letter before, Mr. Moulton? [Handing witness a paper.] A. Yes, Sir.

Q. When did you see it first? A. I think in the latter part of December, 1872.

Q. About the time of its date? A. I don't think it is dated. Somewhere in the neighborhood of the letter of the "Complaining Friend," Sir.

Q. Was it before or after the publication of the letter to the "Complaining Friend?" A. I think it was after, Sir.

Q. Where did you get that letter; how did it come to you? A. I think by Mr. Tilton's hand.

Q. And left with you? A. Yes, Sir.

Q. By him? A. Yes, Sir.

Mr. Tracy—I propose to offer it in evidence, your Honor. [Handing the letter to plaintiff's counsel.]

Mr. Beach—We have no objection.

Mr. Shearman [reading]:

*Mr. Moulton:*

MY DEAR FRIEND: For my husband's sake and my children's, I hereby testify, with all my woman's soul, that I am innocent of the crime of impure conduct alleged against me. I have been to my husband a true wife; in his love I wish to live and die. My early affection for him still burns with its maiden flame; *all the more* for what he has borne for my sake, both

public and private wrongs. His plan to keep back scandals long ago threatened against me I never approved, and the result shows it unavailing; but few would have risked so much as he has sacrificed for others ever since the conspiracy began against him two years ago.

Having had power to strike others, he has foreborne to use it, and allowed himself to be injured instead. No wound is so great to me as the imputation that he is among my accusers. I bless him every day for his faith in me, which swerves not, and for standing my champion against all my accusers.

ELIZABETH R. TILTON.

[Marked "Exhibit D, 44."]

Q. You have spoken of what you told Mr. Beecher Mr. Tracy advised you in regard to the Woodhull scandal. Did you tell Mr. Beecher that Mr. Tracy advised you to deny that part of the Woodhull story that related to yourself, so far as it represented you to be an actor or present at any action? A. I don't recollect, Sir, whether I told him that or not.

#### MOULTON'S PICTURES OF TILTON AND BEECHER.

Q. Mr. Moulton, have you a portrait of Mr. Beecher hanging in your house now? A. No, Sir.

Q. When did you take it down? A. Some little time ago; I forget how long ago; after I got William Paige's portrait; I forget how long ago that was.

Q. About how long ago? A. Within a year, I should think.

Q. Can't you give it nearer than that? A. I don't recollect, Sir; I know distinctly when it was done; that is, I don't remember the date, but I know when it was done, and why.

Q. I don't ask you why; I ask you now for the time? A. I cannot fix the time, Sir.

Q. Do you say you took it down when you got some one else's portrait? A. Yes, Sir; I didn't have any room for William Paige's portrait, and I put William Paige's portrait in Mr. Beecher's place.

Q. William Paige, the artist? A. Yes, Sir.

Q. And Mr. Beecher's portrait was painted by Mr. Paige? A. Yes, Sir.

Q. Now, can't you recollect the season of the year when you took that down? A. I really cannot, Mr. Tracy. I would tell you if I could. It is not very long ago, not very long.

Q. Was it three months ago? A. This is —

Q. January? A. January; yes.

Q. The 25th? A. Yes; December, November, October—I should think it was over three months ago. I should think it was.

Q. Is it about three months ago? A. I should think it was more than three months ago.

Q. When was it? A. Within the year some time; I can't tell you.

Q. Oh! yes; when was it? A. I can't recollect.

Q. Don't you know that it is since August? A. No; I don't know that it is since August.

Q. Don't you know that it is since your statement before the Committee of Aug. 5th? A. I don't recollect, Sir, that it was since then.

Q. Don't you know that that portrait hung in your house, Mr. Moulton, after you made your statement before the Com-

mittee of Aug. 5th, in your front parlor? A. Now, I don't recollect, Mr. Tracy; very likely it did; I cannot say; if I recollected about it, I would tell you.

Q. You mean to say that you don't recollect? A. I mean to say that I don't; precisely; that is my answer; yes, Sir.

Q. How long had it hung there? A. I think Mr. Tilton gave me that portrait, Sir.

Q. I didn't ask you anything about that, Sir. I asked you how long it had hung there? A. I was trying to fix the date, Sir, by the gift.

Q. Just fix the date in your own mind and announce it. It is not necessary that you should think so everybody can hear you? A. I will try not to, Sir.

Mr. Morris—It is not necessary that counsel should assume the tone he does, quite.

The Witness—I think that portrait was given to me by Theodore Tilton—

Q. I didn't ask you that, Sir. I submit now, your Honor, that that is not a proper answer. A. Well, ask me the question again, General.

Q. I have asked you twice.

Judge Neilson—How long did it hang there in your parlor? He don't ask the precise date; up to about what time? A. Yes, Sir. I understand now. It was hung there in the latter part of 1871, I think, Sir; I think so.

Q. And it continued to hang there from that time until it was removed, as you have now stated? A. Yes, Sir.

Q. And was Mr. Tilton's hanging in your back parlor at the same time? A. Mr. Tilton's picture hung in my back parlor; in the dining-room, Sir, over the mantel-piece.

Q. And Mr. Beecher's portrait and Mr. Tilton's portrait are in the front parlor, and the other in the back parlor—were they the two leading pictures in your house? A. No, Sir; they were two leading pictures. I had three portraits of Mr. Payn, my own besides.

Q. Was your own portrait there too? A. Yes, Sir.

Q. In what room was your own portrait? A. In the front parlor.

Q. In the same room with Mr. Beecher's? A. Yes, Sir.

Q. You have stated in a previous part of your examination that your wife had not attended communion at Plymouth Church recently. That communion is held immediately after the morning service, is it not? A. I don't recollect about that.

Q. You don't know? A. I don't recollect.

Q. Didn't you at one time state that you also was a member of the congregation at Plymouth Church? A. I may have done so; I don't know.

Q. Well, didn't you, just after August 31, the next day after that meeting—didn't you publish a card stating that you were a member of Plymouth congregation, and as such had a right to be there, and that your wife was a member of the church? A. I think very likely I did. I was not a member of any other congregation.

Q. No. That is good reasoning. A. Yes, fair.

Q. And did you state that your wife was a member of that church? A. Yes, I think I did. If you will allow me, Mr. Tracy, I would like to tell you why I think I did.



Q. Well, we are content that you thought so, at present? A. Well, I have reference to a communication that I made after the meeting in Plymouth Church.

Q. So have I. Now, don't you know, Mr. Moulton, that your habit of lying in bed late on Sunday morning, and having company at mid-day at dinner on Sundays, has prevented your wife from attending the morning service at Plymouth Church? A. No, I don't know that.

Q. You don't know that? A. No.

Q. You know that she has not attended the morning service usually, do you not? A. I do not think she has very frequently, Sir, attended it since 1870.

Q. Has she not attended the evening service? A. Not more frequently than the morning, I think, Sir.

Q. Not more frequently than the morning? A. No, Sir; not more frequently.

Q. You have spoken of the letter that you wrote to Mr. Beecher on August 5, in reply to his letter, in regard to his demand for his papers in your possession. Now, I am calling your attention to August 5, at the time that that letter was written? A. Exactly; I understand.

Q. In which you say you will confer with Mr. Tilton as soon as possible? A. Yes, Sir.

Q. Did you write Mr. Tilton on the same subject? A. Right immediately there, Sir.

Q. Right there? A. Yes, Sir; put it on record at once.

Q. And Mr. Tilton present at the time you wrote him? A. I do not recollect whether he was or not, Sir, when I wrote the letter.

Q. You say he wrote the letter to Mr. Beecher? A. Yes, Sir.

Q. Now, was your letter to him written at the same time? A. Written right away after; shortly after, I mean, by right after.

Q. Was not he present, and did not he answer your letter right there? A. He answered my letter that same day, whether it was right there or not.

Q. Did he draw his answer right in your study? A. I do not recollect whether he drew his answer right in my study, or not. My impression is that he did.

Q. Did he draft your letter to him, or did you draft it? A. I think I drafted it.

Q. Have you got the draft? A. I think I have.

Mr. Tracy—[To plaintiff's counsel.] I would like you to produce that.

Mr. Morris—We have not got it.

Mr. Evarts—Will the witness look among his papers?

The Witness—I will; I will try and find it, Mr. Evarts.

Mr. Tracy—We would like it now.

The Witness—I do not know whether it is amongst those papers now. That is the reason I spoke. I thought Mr. Evarts alluded to my trying to find it elsewhere.

Mr. Tracy—Will you say, as a matter of recollection, that Mr. Tilton did not draft your letter to him, and make his reply to you in the same room and before you separated that evening? A. He did not draft that letter; my recollection is that he did not draft that, Sir; I drafted that.

Mr. Fullerton—This reminds me, if your Honor please, that

I ought to make a correction of something I said before the recess, which I did not learn until the recess, that a part of the "True Story," so called, was preserved; the whole of it was not destroyed. I stated that the "True Story" had been destroyed; I understand that some fragments of it were retained.

#### AUTHORSHIP OF MOULTON'S FIRST STATEMENT TO THE COMMITTEE.

Mr. Tracy—You made three communications, did you not, to the Committee? A. I made the first one, I think, on July 13. That is the first one I made, I believe.

Q. When was the second? A. The second was when I said that if—

Q. I did not ask you what you said; only give the date that you made it. A. I do not remember the date.

Q. I will refer you to it. A. I think it was August the 6th. I think it was; I don't remember exactly.

[Defendant's counsel here paused in the cross-examination for two or three minutes.]

Mr. Pearsall—Are you waiting for us?

Mr. Tracy—Yes, Sir.

Mr. Morris—What do you wish?

Mr. Tracy—Those papers.

Mr. Morris—There is Moulton's statement to the Committee. [Producing paper.]

The Witness—That is not it at all. I do not believe that there is any original draft of it there—of that first statement.

Judge Neilson—Haven't you it in print?

Mr. Tracy—I am talking about the first statement.

Mr. Morris—I haven't got it.

Judge Neilson—You have it in print, have you not?

Mr. Tracy—We have it in print; yes, Sir.

Judge Neilson—Can't you use that?

Mr. Tracy—It is not the object to use it—my calling for it.

Q. Do you know who drafted that statement? A. My original statement?

Q. Yes, Sir. A. I did myself; I wrote my first statement.

Q. Who was present when you did it? A. I dictated it in the presence—I dictated it to Theodore Tilton; I don't remember who else was present. Is that what you mean by drafting?

Q. Mr. Tilton was present then when it was drafted? A. Yes, Sir; I dictated it to him.

Q. Then Mr. Tilton wrote it, didn't he? A. I don't remember whether he wrote it or not. I copied it from his writing, I guess, myself.

Q. You copied it from his writing? A. I guess so; yes, Sir.

Mr. Morris—He took it in shorthand? A. He took it in shorthand. I think Mr. Carpenter and Mr. Redpath were present, too, at that time. I think so; one or the other of them. I have some recollection of it.

Mr. Tracy—You have spoken of a conversation which occurred at your house between yourself, Mr. Tilton and myself in which you say that his anger was melted. I refer to that conversation for the mere purpose of fixing a date. Did you at any time soon after that see in Mr. Tilton's house a proposed

report to the Committee—for the Committee? A. Soon after that conversation with him?

Q. Yes. A. Yes, Sir; I think I did, a long report.

Mr. Tracy. [To plaintiff's counsel]—Gentlemen, will you produce that? [To the witness.] Referring to that report, I ask you the fact whether you know that Mr. Tilton went to the members of the Committee and urged them to accept that report—to one or more members of the Committee? A. I don't know that; no.

Q. You introduced—a short report has been introduced which seems to have been prepared about the same time. Do you know in whose handwriting that report is? A. Yes, Sir: the short one?

Q. Yes, Sir, as it was introduced in evidence? A. Yes, Sir; Robert Eddy's.

Q. He is your bookkeeper? A. Yes, Sir.

Q. From what did he copy it, do you know? A. I think he copied it from an original draft by Mr. Tilton or by myself.

Q. Do you know which? A. Mr. Tilton, I believe.

Q. Do you know whether as a matter of fact that short report was prepared after the long one of which we are now speaking?

A. My impression is it was; yes, I think so.

A. Do you know at whose suggestion that short report was prepared? A. No; I do not know at whose suggestion, Mr. Tracy.

Q. Was it at yours or Mr. Tilton's suggestion? A. I think it was Mr. Tilton's idea. It was prepared about the time of the long one.

Q. That is the report that you call the long report, is it not [handing witness a manuscript]? A. I believe that is it, Sir [handing back the paper].

Q. This is the report, is it? A. I think that is it; yes, Sir.

Judge Neilson—The proposed report?

Mr. Tracy—Yes, the proposed report—Mr. Tilton's proposed report for the Committee.

Judge Neilson—Being the second in order.

Mr. Tracy—Being the first in order of time, the second one that was introduced in evidence.

Mr. Shearman—The paper is in the handwriting of Mr. Tilton. [Reading]:

#### TILTON'S PROPOSED VERDICT FOR THE CHURCH COMMITTEE.

The undersigned, constituting the Committee of Plymouth Church, to whom were referred certain recent publications of Dr. Leonard Bacon and Mr. Theodore Tilton, hereby present their unanimous report.

The Committee sought and obtained a personal interview with each of the three following named persons, to wit: Mr. Tilton, Mrs. Tilton, and the pastor, all of whom responded to the searching questions of the Committee with freedom and candor. Documents, letters, and papers pertaining to the case were carefully considered. A multiplicity of details, needing to be duly weighed, occasioned a somewhat protracted investigation. The Committee hope that the apparent tardiness of their report will be compensated to the parties by rectifying an erroneous public sentiment under which they have all suffered misrepresentation.

1. The Committee's first interview was with Mrs. Elizabeth R. Tilton, whose testimony was given with a modesty and touching sincerity that deeply moved those who listened to it.

Her straightforward narrative was an unconscious vindication of her innocence and purity of character, and confirmed by evidences in the documents. She repelled with warm feeling the idea that her husband was the author of calumnious statements against her, or had ever treated her with other than chivalrous consideration and protection. She paid a high tribute to his character, and also to the fortitude with which he had borne prolonged injustice.

II. The Committee further find that Mr. Tilton, in his relations with the pastor, had a just cause of offense, and had received a voluntary apology. Mr. Tilton declined to characterize the offense for the following reasons: First, because the necessary evidence which should accompany any statement would include the names of persons who had happily escaped thus far the tongue of public gossip; next, that the apology was designed to cover a complicated transaction, its details, difficult of exact or just statements; and last, that no possible good could arise from satisfying the public curiosity on this point. Mr. Tilton, after concluding his testimony, respectfully called the attention of the Committee to the fact that the Clerk of the Church had spoken calumniously of Mr. Tilton during the late council, and had since unqualifiedly contradicted and retracted his statements as untrue and unjust, and he (Mr. T.) requested the Committee to ratify and confirm that apology, making honorable record of the same in their report, which is hereby cheerfully done.

III. The Committee further find that the Rev. Henry Ward Beecher's evidence corroborated the statements of Mr. and Mrs. Tilton. He also said the church action of which Mr. Tilton had complained had not been inspired by the pastor, but had been taken independently by the church; that the popular impression that Mr. Tilton had been in the habit of speaking against him was unjust to Mr. T., and was owing mainly to the unwelcome introduction into the church of charges against Mr. T. by a mere handful of persons, who, in so doing, had received no countenance from the great mass of the congregation or from the pastor. He said that the apology had been invested by the public press with an undue mystery; that, after having been led by his own precipitancy and folly into wrong, he saw no singularity of behavior in a Christian man (particularly a clergyman) acknowledging his offense. He had always preached this doctrine to others, and would not shrink from applying it to himself.

The Committee, after hearing the three witnesses already referred to, felt unanimously that any regrets previously entertained concerning the publication of Mr. Tilton's letter to Dr. Bacon should give way to grateful acknowledgments of the providential opportunity which this publication has unexpectedly afforded, to draw forth the testimony which the Committee have thus reported in brief, but in sufficient fullness, as they believe, to explain and put at rest forever a vexatious scandal. The Committee are likewise of opinion, based on the testimony submitted to them, that no unprejudiced court of inquiry could have reviewed this case, as thus presented in person by its principal figures, without being strikingly impressed with the moral integrity and elevation of character of the parties; and accordingly the Committee cannot forbear to state that the Rev. Henry Ward Beecher, Mr. Theodore Tilton, and Mrs. Tilton (and in an especial manner the latter), must and should receive the increased sympathy and respect of Plymouth Church and congregation.

(Signed).

[Marked "Ex. D 45."]

#### TILTON'S SEPARATION FROM HIS WIFE.

Mr. Tracy—There are two or three mistakes in this, and therefore the copy should be taken from the draft and not from the printed copy. It is not very important, but there are three of them. [To the Witness.]



Now. Mr. Moulton, at that interview, of which you have spoken at your house, between yourself, Mr. Tilton and myself, did you accompany Mr. Tilton to the door that night when he went home? A. I think I did, Sir.

Q. Down stairs? A. Yes, Sir.

Q. Did you tell him, while standing on the step or at the door that night, to go home and be reconciled to his wife, that the time had not come to fight her yet? A. No, Sir; I did not use that last expression.

Q. Did you use the first? A. Well, put it in the form of a question and I will answer it, Sir.

Q. Did you tell him that night at the door to go home and be reconciled to his wife? A. I told him something like that, Sir; I did not use precisely that language.

Q. In substance that, did you? A. I advised him to go back to his wife; yes, Sir.

Q. And did you add that the time had not come yet for him to fight his wife? A. No; I don't recollect.

Q. Or words to that effect? A. No, Sir; no.

Q. He had separated from his wife at that time, had he not? A. He told me, I think it was on that morning, that he had left her the night before on learning that she had gone to the—

Q. In consequence of her going before the Committee? A. Yes, Sir, in consequence of her having gone before the Committee. Whatever day that was, he told me on the morning after that, I think.

Mr. Fullerton—Told you what? A. On the morning after that, on the morning after his wife had been before the Committee, Mr. Tilton told me that he had left the house.

Mr. Tracy—That she had come home that night, and told him that she had been before the Committee? A. Yes, Sir.

Q. Did he tell you that he was in bed?

Mr. Evarts—No matter what passed between them; he said that he had left in consequence.

Q. And you understood that he went back that night to his wife, did you not? A. Yes, Sir.

Q. And the next morning, or the next morning but one—which was it that he presented to you this report? A. I don't recollect whether it was the next morning or the next morning but one. He submitted it to you and me together when he did submit it.

Q. How long did he and his wife remain together after that? A. I don't recollect how long. She left him, I think, on Saturday, if I recollect right—Saturday of that week.

Q. Was it until she left and went to Mr. Ovington's; did they remain together until she left and went to Ovington's? A. Whatever day it was, Sir, she went to Mr. Ovington's; I cannot recollect.

Q. I did not ask you the date. As a matter of fact they remained together, didn't they, until his wife left home? A. I don't know how long they remained together. I understood they did.

Q. Did Mr. Beecher at any time ask you for the return of the paper that you now call the letter of contrition? A. Ask me for it—no.

Q. Never asked you for it? A. No.

Q. Did you at any time ever tell him that you had burned that paper? A. Never.

Q. You never did? A. Never.

Q. His statement that you had so told him had been published in the newspapers before you made either of your statements, had it not?

Mr. Beach—Wait one moment. We object to that.

Mr. Tracy—I will change the question. Had his statement—what is known as Mr. Beecher's statement before the Committee, and his cross-examination, been published before you made either of your statements? As I think that has transpired already. A. Yes, Sir; yes, I think—yes, certainly, before I made either of my statements. No, I made the first—

Q. Before you published either of them? A. No; my statement of July 13 was published before that. The short statement of July 13 was published on July 14, in which that letter was referred to.

Q. I mean either of your long statements.

Judge Neilson—Either of the two last statements? A. No, Sir.

Mr. Tracy—Both of those were published after Mr. Beecher's statement? A. Yes, Sir.

Q. The first long statement of yours was prepared before Beecher's statement was published, was it not? A. Not altogether, I believe.

Q. The first statement that Gen. Butler prepared for you. Well, I don't know whether it was the first that he prepared or not, but the first that was published in *The Graphic*? A. Before Mr. Beecher prepared his?

Q. Before Mr. Beecher published his? A. Before Mr. Beecher published his?

Q. Before it was published? A. Before Mr. Beecher's was published—that is the question you ask me?

Q. Yes, Sir. A. Whether that statement was published before Mr. Beecher's statement was published?

Q. Yes, Sir. A. I think it was; yes, Sir. What day was Mr. Beecher's published, Mr. Tracy?

Q. Aug. 14. A. What day was my statement made to the Committee, do you remember?

Mr. Shearman—Aug. 5.

#### THE MOULTON-BEECHER FRIENDSHIP QUICKLY TURNED TO ENMITY.

Mr. Tracy—Have you recently expressed hostility—violent hostility—towards Mr. Beecher? A. I don't recollect that I have. How recently, Sir?

Q. Within three months? A. Within three months?

Q. Yes, Sir. A. I think very likely—

Mr. Beach—A general question of that kind is not admissible. It must be pointed to time and place and some circumstance.

Mr. Tracy—It is—within three months.

Judge Neilson—Well, he has answered it.

The Witness—What is it now?

Mr. Tracy—I say within three months; haven't you since the publication of his statement?

Mr. Beach—To whom?

Mr. Tracy—We will get at it.

Mr. Beach—No, Sir---

Judge Neilson—You must point his attention to time and place, or the persons present.

Mr. Evarts—It is not a question of contradicting him, it is asking him a question.

Judge Neilson—I don't know.

Mr. Evarts—When it becomes a question of contradicting then we are obliged to give time and place.

Judge Neilson—I think it would be fair to the witness to specify time and place.

Mr. Evarts—How do we know anything about it? Your Honor is assuming that the question is asked for the purpose of contradicting him, and that we have the means of contradicting him. Your Honor is entirely right, of course, if that were the case. Whenever you wish to proceed thus to impeach, we do not differ as to what the rules are, but we have a right, as matter of direct evidence of the witness's own mouth, to prove that he has expressed hostility towards Mr. Beecher.

Judge Neilson—Undoubtedly.

Mr. Evarts—It is not with a view of contradicting him; it is with a view of proving it.

#### THE WITNESS AGGRESSIVE.

Mr. Beach—There is no doubt of that, Sir, that they may prove that the witness has hostility—that he entertains ill feeling; but when they ask for the declaration of the witness, at any time, or for any purpose, the rule is invariable that they must direct the attention of the witness to the time and the place and the person to whom the expression was made.

Mr. Evarts—I think my friend will see that it is only as a foundation to contradict him that we must do that.

Mr. Beach—Well we do not know whether they are making a foundation to contradict or not.

Mr. Evarts—The way would be that when we brought some one up to contradict him, some one would say we had not directed his attention to the time and place.

Judge Neilson—There are two considerations in regard to it; one is as to the question of fairness to the witness, the other of policy. You should direct his attention, if you can, to the occasion.

Mr. Tracy—If he says he is, we may ask him when and where.

Judge Neilson—Let him answer the question. Repeat the question, Mr. Stenographer.

Mr. Fullerton—He has answered.

THE TRIBUNE stenographer [reading]:

Q. Have you recently expressed hostility—violent hostility towards Mr. Beecher? A. I don't recollect that I have. How recently, Sir?

Q. Within three months? A. Within three months?

Q. Yes, Sir. A. I think very likely—

The Witness—What do you mean by violent hostility?

Mr. Tracy—I put that question to you.

Judge Neilson—As you understand the word, have you expressed violent hostility or not? A. Yes, Sir; I have expressed hostility to Mr. Beecher.

Mr. Tracy—Have you expressed violent hostility to him? A. I have expressed hostility violently. [Laughter.]

Q. Have you expressed a determination to do him great violence, or a willingness to do him great violence? A. Not that I remember—not great violence.

Q. Do you know Mr. Caldwell? A. Yes, Sir; I know him.

Q. H. S. Caldwell? A. Yes; Sir; I know him.

Q. Did you say to him, within a month or thereabouts, in your house, "Mr. Beecher is a liar and a libertine, and, damn him, if personal violence would do any good, I would cut him down in a minute?" A. No, sir.

Q. Have you said that within two months to Mr. Caldwell? A. No, Sir.

Q. Did you ever say it to Mr. Caldwell? A. No, Sir.

Q. Or anything like it? A. No, nothing like that. I thought he was a sneak—

Mr. Evarts—What do you say? A. I thought Caldwell was a sneak when he came to the house.

Mr. Evarts—We ask to strike that out.

Judge Neilson—Strike that out.

Mr. Fullerton—He ought to have been struck out when he came to the house—

Judge Neilson—No laughter! Stenographer, strike that out; that was not an answer to the question.

Mr. Tracy—Did you express a similar sentiment to Augustus Storrs within three months at your house?

Mr. Beach—Oh! a similar sentiment—

Mr. Tracy—Well, the same sentiment towards Mr. Beecher? A. To Augustus Storrs?

Q. To Augustus Storrs, in presence of his brother Charles? A. No.

Q. Or did you to Charles, in presence of his brother Augustus? A. No.

Q. Didn't you say in their presence, at your house—since the termination of the libel suit of Miss Proctor against you—didn't you say to them in your house, that Mr. Beecher was a sneak and liar; and that if they said so, damn him, you would shoot him? A. That if what?

Q. If they said so? A. If they said so, I would shoot him?

Q. Yes.

Judge Neilson—Did you say that? A. I don't exactly understand the form of the question. No; I didn't say that.

Mr. Tracy—Did you say anything in substance like that? A. No.

Q. Did you express any willingness to commit violence against Mr. Beecher in their presence? A. No.

Q. Did you say that he was a sneak and liar, in their presence? A. I don't recollect that I said that.

Q. Did you express any willingness or disposition to commit violence against Mr. Beecher? A. No.

Q. Did you express any hostile sentiment toward Mr. Beecher in their presence? A. I think I did, Sir; I will tell you all I said, as near as I recollect, if you would like to have it.

Q. That will be proper when they tell you to tell us what you said? A. All right.

Q. Have you not in conversation with Mr. A. W. Tenney, United States District Attorney of this District, recently expressed yourself in violent terms of hatred towards Mr. Beecher? A. In violent terms of hatred?



Q. Yes. A. Not in violent terms of love; I don't know that I said I loved him.

Q. That is not my question; I don't ask you that. I ask you to answer it—on the ferry-boat on the East River?

Mr. Beach—The expression, or the substance of the expression, should be given, Sir. "Violent terms of hatred" does not call for the declaration of the witness as it was made.

Judge Neilson—Well, the practice is no doubt to ask him if he did not make a certain specific statement, or in substance something like that. The question you do put depends upon the construction—it is somewhat a matter of construction. What one person might understand by violence, another might not.

Mr. Tracy—Certainly, that argument will be in order when we offer to contradict him, if we do not amplify this statement.

Judge Neilson—It is not an argument; it is a suggestion by the Court.

Mr. Evarts—We do not differ as to the basis of contradiction, but we do claim the right to have the witness's first answer which may be sufficient.

Judge Neilson—Now, the question is as to what he said to Mr. Tenney.

The Witness—Well, Sir, what is the question?

Mr. Tracy—The question is, have you not in conversation with Mr. A. W. Tenney expressed yourself in violent terms of hatred towards Mr. Beecher within three months?

Mr. Fullerton—Well, Sir, that is objected to. Suppose they should produce Mr. Tenney, and ask him whether Mr. Moulton—

Judge Neilson—They would not upon that general statement.

Mr. Fullerton—Certainly not; but then they would claim the right to prove by Mr. Tenney what Mr. Moulton said; and then, if we objected, of course we would be subjected to criticism.

Judge Neilson—Before they call the District Attorney they will have to ask this gentleman what he said.

Mr. Fullerton—If the statement is given in evidence, then the jury will judge whether it is violent or not.

Mr. Evarts—If your Honor please, then we do not differ as to the contradiction. The objection is to be made to us when we attempt to contradict that we have not laid the basis. That is the ordinary course of this matter. We are endeavoring to prove by this witness, without contradiction and without support, that he has said these things under the general rule.

Judge Neilson—Now, the question is whether you said that to Mr. Tenney on the boat.

Mr. Beach—That is not the question; your Honor gets the question right, but the counsel do not.

Judge Neilson—I bring the boat in.

[Question read by THE TRIBUNE stenographer.]

A. I expressed myself against Mr. Beecher.

Q. To Mr. Tenney? A. Yes, I think so.

Q. Didn't you express yourself violently? A. Perhaps I did; I don't recollect now the expression that I used distinctly.

Q. Didn't you call him a liar? A. I don't recollect that I did; I might have done so.

Q. Sneak? A. I don't recollect that I did.

Q. And a libertine? A. I don't recollect.

Q. Accompanying each one with an oath? A. I don't recollect that I did, Sir.

Q. Well, you say that you did not? A. If I had any recollection about it I should state my recollection, Sir. I don't remember the language.

Q. Well, that is to say you have no recollection upon the subject? A. I don't recollect the language. I expressed myself, I guess, on two occasions to Mr. Tenney against Mr. Beecher instead of one.

Q. When was the other? A. I don't know. I think in Montague-st., somewhere.

Q. How recently? A. Not very long ago. I don't recollect how long ago.

Q. Have you not repeatedly declared your intention to crush Mr. Beecher at any cost? A. No; I don't think I have said that I would crush him at any cost.

Q. Well, have you avowed your determination to crush him? A. No; I think not; I have not put it in that language, I think.

Q. Have you avowed your intention to drive him out of Brooklyn? A. No, I think not.

Q. Didn't you say to Augustus Storrs, in presence of his brother Charles, or when the two were present, didn't you say that you intended to drive Mr. Beecher out of Brooklyn? A. No, I didn't; I may have said I thought he ought to be driven, but I didn't say that I was going to drive him.

Q. You did say that he ought to be driven out of Brooklyn? A. No, I don't recollect that.

Q. Oh! you don't recollect that? While the Investigating Committee was in session, didn't you send for the brother of a member of that Committee, and have him call upon you—a brother of a member of that Committee, and threaten him that, unless at least one member of the Committee dissented from their report in favor of Mr. Beecher, you would publish, or cause to be published, a scandalous statement about a lady? A. No.

Q. You didn't? A. No; I will tell you what I said to him, if you want to know.

Q. Answer my questions first, and then we will see. A. All right.

Q. Pending the investigation? A. I did send for the brother of a member of that Committee; that part is true.

Q. Pending the investigation and before the report was made did you send for Charles Storrs, and have an interview with him? A. I did; yes, Sir.

Q. Did you tell him that if his brother Augustus hadn't signed the report he must not, or, if he had, he must take his name from it? A. I did not tell him that.

Q. Did you tell him that if he did not do one or the other, that is, if he didn't omit to sign, or take his name from it, if he had signed, you should make a publication concerning a person that would break the heart of Charles Storrs? A. No, I didn't.

Q. You didn't state that? A. No.

Q. And when he asked you if you meant Miss Proctor, didn't you say, "I call no names?" A. I said "I call no names."

Q. But it was "a person that would break your heart?" A. I said I called no names, but I didn't say anything about breaking hearts.

Q. If you did not use that language, didn't you say it was a lady who—a friend of his? A. I don't know whether I said it was a friend of his or not, Sir

Q. Then did you threaten to make the publication? A. No.

Q. Concerning some person, if Mr. Augustus Storrs didn't either refuse to sign the report, or if he had signed it, to take his name from it? A. No I didn't threaten, Sir.

Q. Did you threaten Charles Storrs that you would make such a publication in any contingency? A. No.

Q. Did you state to him that you would make such a publication, or that you might make such a publication? A. I stated to him that I might make a publication.

Q. About whom? A. It might be necessary to refer to a person in the publication that it would be necessary for me to make.

Q. How did you describe the person? A. I don't think I described her. I think he asked me if I referred to Miss Proctor—

Q. Then what did you say to that? A. I told him that I should not mention any names.

Q. Did you say in any way that it was a person that would break his heart, or that it was a person in whom he was interested, a friend of his? A. Don't recollect that language; no.

Q. Was Miss Proctor an inmate of Mr. Storrs's family at the time?

Judge Neilson—One moment, now. The other day I professed a very earnest solicitude that third persons should remain unnamed—was very emphatic, I think, for me, when Miss Proctor was named by some person: I requested that those names should be omitted, and they might be omitted from your question, I think: I want that omitted out of the answer.

Mr. Fullerton—If your Honor please, it has not been omitted; your Honor's wish has not been complied with, in that respect.

Judge Neilson—I don't know whether that was when Mr. Tracy was here, or before he came in.

Mr. Moulton—He was here.

Judge Neilson—But I certainly did wish, and expressed that wish, that those names of third persons should be left out. I think it is a great pity that you should commit the error of bringing their names in.

Mr. Evarts—The witness brought her name in.

Mr. Fullerton—No, he did not.

Mr. Evarts—He did directly.

Mr. Fullerton—No, he did not, Sir.

Mr. Evarts—He said at this interview Mr. Storrs asked him if he meant Miss Proctor.

Judge Neilson—That is the question put by Gen. Tracy.

Mr. Evarts—It was not a question put by him. There was no question put by us that reached any person. The question was, whether he told him that if he didn't do so and so, he, this witness would publish a statement, concerning a person, that would break his heart. Now, your Honor certainly does not mean to say that, when we are trying this issue between these parties, we haven't a right to prove such statements as that.

Judge Neilson—Said the question would, of course.

Mr. Evarts—No; then the witness says, "I did not. He asked me if I meant Miss Proctor."

Mr. Morris—Now, the name of Miss Proctor was mentioned by counsel first.

Mr. Evarts—Look at the stenographer's notes.

Judge Neilson—I don't think Mr. Tracy was present when I suggested to Judge Porter not to mention the names of third persons.

Mr. Tracy—Oh! I was.

Mr. Beach—Mr. Stenographer, please read the last question.

Mr. Tracy—I do not hesitate to take the responsibility of introducing Miss Proctor's name here to-day.

Judge Neilson—Well, there is a responsibility beyond this.

Mr. Tracy—Very well, I introduce the name of Miss Proctor here to-day in a way that is entirely creditable to the lady.

Judge Neilson—It is not a question of creditability?

Mr. Tracy—It may be, but it is entirely creditable to her. I am showing that this witness attempted to coerce her friends in their action on this Committee as the penalty of his not making a publication concerning her.

Mr. Fullerton—The gentleman will fail in that attempt.

Mr. Tracy—Not much.

Mr. Fullerton—We will see if you don't.

Mr. Evarts—How does that become proper?

Mr. Beach—I believe I have endeavored to get the ear of the Court for a moment, and Gen. Tracy interrupted me, and now the senior counsel interrupts me.

Mr. Evarts—I haven't interrupted. I have asked that the question might be read.

Mr. Beach—So have I. [Last question was read by THE TRIBUNE stenographer.]

Mr. Beach—Yes, Sir; then the name of Miss Proctor was first mentioned in the question put by Gen. Tracy?

Mr. Evarts—Go back to the witness's answer before that, and you will find Miss Proctor's name in the witness's answer.

Mr. Morris—I say it was first mentioned by Mr. Tracy.

THE TRIBUNE stenographer [reading]:

Q. How did you describe the person? A. I don't think I described her; I think he asked me if I referred to Miss Proctor.

Q. Well, what did you say to that? A. I told him that I should not mention any names.

Mr. Beach—Now, your Honor, I submit that this inquiry in regard to what transpired with reference to Mr. Storrs, is not at all material to the inquiry which the counsel are pursuing. The object is to prove ill-will on the part of this witness toward Mr. Beecher; that is the professed object of their inquiry; and this conversation as between Mr. Storrs, so far as it relates to the action of the Committee, or to Miss Proctor, or any other lady, I submit, is not material, and I ask that that whole inquiry be struck out.

Mr. Evarts—We propose to show this witness's hostility; his proceedings indicating hostility; his making himself a party to the procedures against Mr. Beecher; his threats to those who are engaged concerning the inquiry in the mode and form in which the witness showed this attitude and expressed this hostility; and the laws of evidence permit us to do so, and make it the only proper way to do so. Now, upon



the majority of fact, your Honor sees that we were entirely right. We desired to get from this witness what was pertinent and material, that he had threatened a member of the Committee that unless he took a position of dissent either by abstaining—withholding and withdrawing his name from the report, as the case might be—he (witness) might be forced, or might be led to make a publication that would affect and afflict Mr. Storrs. And we leave it for the witness to say whether he did or not. Well, his course of answers it is not necessary for us to repeat. Then we press him to get out the principal fact, which he will not give in general terms; and, finally, it comes down to this: "How did you describe that person?" He would not say that it was anybody that would break his heart; he would not say that it was anybody that was connected with Mr. Storrs in any such general relation as would omit a name; and we then say to him, how did you describe the person concerning whom you were talking to Mr. Storrs? Then he says, "I think it was Mr. Storrs who asked me if I referred to Miss Proctor." Now, that shows that the conversation was had; that he did assume this attitude towards Mr. Storrs in dealing with some person; that abstinence from public comment about it would be desirable, and the contrary afflictive to Mr. Storrs. That is what we set out to prove.

Mr. Beach—The examination, Sir, of the testimony of the witness shows that the first intimation that Miss Proctor's name was connected with this conversation, as the person in regard to whom any statement was to be made, or any revelation made, comes from the other side.

Mr. Evarts—Not in the least.

Mr. Beach—It does, Sir. When the witness said that Mr. Storrs asked him if Miss Proctor was referred to, the witness answers, "I mention no names." And, then, they went on with the inquiry, which draws from the witness this fact, that Miss Proctor was the person alluded to; and, so far as the bringing out of her name in connection with this scandal is concerned, the responsibility rests upon the gentleman making this inquiry. Now, Sir, we have avoided that; we have resisted it as far as we can. We make no imputations upon third persons, and would relieve everybody except the immediate parties to this controversy from any reflections which might arise out of connection with this difficulty. If the gentlemen persist in introducing the name of that lady, they must do it upon their own responsibility.

Mr. Fullerton—And it may be necessary for us hereafter, if the other side put us in such an attitude as to make it necessary to prove what did occur with regard to that lady for the purpose of justifying the witness. They take the responsibility of the whole thing.

Mr. Evarts—We have no difficulty in assuming responsibilities if they are cast upon us; we do not venture upon them in the conduct of our side in this case. But we have not any responsibility about what you do in consequence of what we do. You will do as you are advised. We will take care of our own side.

Mr. Beach—It seems to me that you are violating the order of debate, and insisting upon the last word in an argument upon our objection.

Mr. Evarts—But you say always something new.

Mr. Beach—No, we do not; no new ideas.

Mr. Evarts—Now, my friends have undertaken to present an attitude, a sort of defiance upon this subject; certainly no one on our side of the case wishes to make any imputations upon Miss Proctor; we never believe a word of either the threatened publication or the actual publication.

Judge Neilson—Why refer to the actual publication?

Mr. Evarts—Well, because the actual publication is in the matter.

Judge Neilson—No, it is not in; it is not in, and with my consent it won't be in, as far as this case is concerned.

Mr. Evarts—I dare say it may not, but we are not the side that are to be made the subject of imputation of wishing to bring Miss Proctor in.

Judge Neilson—The examination will be as it now stands with the exception that Miss Proctor's name will be stricken out, and it shall be omitted hereafter. Whatever occurs, I should not allow any evidence to vindicate that lady, as I certainly should if the subject were brought up here properly.

Mr. Evarts—Your Honor will note our exception to that direction.

Judge Neilson—Yes, as to the hostility of this witness, whether you characterize it as violent or not; whatever it may be you have a right to show that, of course.

Mr. Tracy—What did you say to Mr. Storrs concerning what you would do? A. I said to Mr. Storrs that I had understood that I was not to be cross-examined by the Committee.

Mr. Tracy—I have reference to the publication.

Mr. Beach—Wait one moment.

Judge Neilson—I think he has answered; go on.

Mr. Evarts—That took place at this interview? A. That I understood that I was not to be cross-examined by the Committee; that I had come from Lowell for the purpose of that cross-examination, and that I did not want his brother to sign that report until I had an opportunity of being cross-examined by the Committee; for if his brother did sign that report without giving me an opportunity to be cross-examined, he could not possibly know the truth, and that if that report was signed, and it was against me, as I understood it should be, I should make a publication of facts in reply, and that publication, as I understood my counsel advised it, would perhaps cross the threshold of his family, and came to see him as a personal friend, telling him that I did not want to do any such thing, and I said to him: "I want you, Mr. Charles Storrs, to put it only upon the ground of my being cross-examined. Tell your brother that I don't want him to sign that report until I have had an opportunity for cross-examination, in order that the facts which I have stated in print may be fully known." That is what I said. I went to see Charles Storrs as a friend, Sir. I have given it as nearly as I recollect it.

Q. Do you know William B. Barber? A. Yes, Sir.

Q. Did you have a conversation with him on the floor of the Produce Exchange within two or three months on the subject of Mr. Beecher? A. I don't recollect whether it was within two or three months, or not. I had a conversation with him on the floor of the Exchange about the time of the Victoria Wood

hull publication, and I rather think during the time of the Investigating Committee.

Q. Haven't you since the Investigating Committee? A. I may have done so; I don't recollect precisely about it now. I see him every day on 'Change when I am there and he is there.

Q. Didn't you tell him that Mr. Beecher was a damned perjurer and libertine? A. I don't know whether I told him he was a damned perjurer and libertine. I may have told him he was a perjurer and libertine, as he is. [A murmur in the audience.]

Q. Did you tell Mr. Barber so? A. I don't recollect whether I told Mr. Barber so or not, Sir.

Judge Neilson—Will the audience keep quiet!

Mr. Tracy—Have you ever threatened persons with danger to themselves if they should testify on behalf of the defendant? A. No, I have not threatened persons if they should testify on behalf of the defendant.

Q. Have you threatened any person? A. No, I have not threatened any person.

Q. Did you threaten Mr. Armour that you would crush him if he should testify against you on this trial? A. No, I did not threaten Mr. Armour that I would crush him.

Q. Do you know him? A. Yes; he is not the man to be crushed easily.

Q. Have you had any conversation with him on the subject of his testimony? A. I don't recollect having any conversation with him on the subject of his testimony. I had a conversation with him in regard to an interview that purported to come from him in the paper.

Q. Yes; did you state to him that you would crush him? A. No.

Q. Did you ever threaten to crush him for anything? A. No.

Q. Did you have any talk with him about his being a witness on this trial? A. I don't think I said anything to him about his being a witness; no I don't think I did; he is not a man I would use such language to, Mr. Tracy.

Q. [Book produced and handed to witness.] Now, Mr. Moulton, during your interview with Mr. Beecher on the night of 30th of December, '70, was there anything said by Mr. Beecher as to the truth or falsity of Mrs. Tilton's confession? A. Does your Honor permit them to go back for the fifth time to that interview of the 30th?

Judge Neilson—Well, it is on the ground that some question he thinks proper is inadvertently omitted.

Mr. Evarts—This is a question excluded. We ask him whether at that interview, there was anything said by Mr. Beecher concerning the truth or falsity of that confession—the same question—and there is no rule of law that you can't do it for the fifth time, if you can do it the fourth. But this is the first time the question has been asked.

Mr. Fullerton—The first time this question has been asked, but it is the fifth time the transactions of the 30th have been gone over, and my objection is that they cannot return to it again.

Judge Neilson—Who were present?

Mr. Evarts—It is an interview between himself and Mr. Beecher.

Judge Neilson—He has stated the conversation.

Mr. Evarts—The conversation has been given; now we ask him whether there was anything said by Mr. Beecher concerning the truth or falsity, either way, of Mrs. Tilton's accusation.

Judge Neilson—I think we will allow that.

Mr. Beach said—Do you mean in direct terms or do you mean by implication?

Mr. Evarts—We ask the question.

Mr. Beach—It may be necessary to go over the whole interview for the purpose of telling whether anything was said in regard to its truth or its falsity?

Judge Neilson—Now read the question, Mr. Stenographer.

[The last question by Mr. Evarts read by THE TRIBUNE stenographer.]

Mr. Beach—I submit that that question calls upon the witness to give a judgment or construction in regard to the conversation which he has already detailed.

Mr. Evarts—This is a cross-examination.

Mr. Beach—If it is a cross-examination they can't ask him to give a judgment as to the meaning of the language which was used, and it may impose upon the witness the necessity of seeing or referring to the testimony which he has given relating to the details of that conversation.

Mr. Evarts—We are cross-examining this witness, and we do not like to have suggestions made to him as to what may be a necessary answer for him to make.

Judge Neilson—Still, you are sensible of the fact that you are allowed to go back to it after having exhausted the interview.

Mr. Evarts—We have closed our cross-examination in general now, and we are closing up the points that are to be considered.

Mr. Beach—My suggestion was that the question should call for the witness to answer whether anything was directly said by Mr. Beecher in regard to the truth or falsity of that confession.

Mr. Evarts—That is exactly what the question is, whether at that interview anything was said by Mr. Beecher concerning the truth or falsity of the accusation?

Mr. Beach—I think no one but the gentleman will perceive the difference between that question and that construction of it.

Judge Neilson—Take that last down as the question. It may be a modification of the other question.

[Question read by TRIBUNE stenographer.]

Mr. Evarts—That interview of December 13th, 1870, is included in the question of course.

Judge Neilson—The accusation in what, in Mrs. Tilton's letter?

Mr. Evarts—Yes, Sir.

The Witness—The only word that was said to me by Mr. Beecher in regard to Mrs. Tilton's confession, was at the foot of the stairs, when he asked me, "Have you seen the confession?" and I said I had, and he said, "This will kill me."

Q. That is all that was said? A. That is all that was said, Sir. Now whether that is a denial or not I don't know.

Mr. Tracy—After the interview between Mr. Beecher and



Mr. Tilton had closed that night, did Mr. Tilton say to you that all Mr. Beecher said touching the confession of his wife's adulteries was—did Mr. Tilton say to you that all the answer that Mr. Beecher made to him after what he had said to him was: "This is all a dream, Theodore"? A. Mr. Tilton told me that after he had spoken to Mr. Beecher, Mr. Beecher said: "This is all a dream. Theodore;" something like that.

Mr. Evarts—Do you say that that is all the answer that Mr. Beecher made? A. He said that that was the answer that Mr. Beecher made. I remember that Sir; that is all I remember.

#### HINTS ABOUT THE DEFENSE'S WITNESSES.

Q. Do you know Senator John C. Jacobs of this city? A. Yes, Sir; I know him.

Q. Did you ever have any conversation with him at Albany at any time in regard to the Beecher-Tilton scandal? A. I don't recollect whether I did or not.

Q. Did you at Albany, in the Spring or Winter of 1873, during the session of the Legislature of 1873, in a conversation with Mr. Jacobs, where the Beecher-Tilton scandal was the subject of conversation, say to him that if this matter was ever investigated Mr. Beecher would prove to be all right? A. I don't recollect whether I did or not.

Q. Do you remember that you did not? A. If I had any recollection about it I would tell you.

Q. You mean to say, then, that you have no recollection? A. I have not any recollection about that.

Q. Have you a recollection of conversing with him on that subject? A. I think I did talk with Mr. Jacobs about it; yes, Sir.

Q. In that conversation did you say anything in substance like what I have repeated? A. I think I carried the impression that Mr. Beecher was not a guilty man—I think so.

Q. And didn't you say, in substance, that whenever the truth of this matter was known, Mr. Beecher would prove to be an innocent man? A. I don't recollect that, Sir. My impression with regard to what I have said, I have just given you.

Q. What was it? A. All I recollect—the impression that I gave him was that Mr. Beecher was not a guilty man.

Q. How did you give him that impression? A. I must have given it in words.

Q. Were the substance of the words by which you conveyed that impression to him that when the truth was known, or that when this matter was investigated, Mr. Beecher would prove to be an innocent man? A. I don't recollect those to be the words, or the substance of the words.

Q. Did you say anything on the subject of what the result would be of an investigation? A. I don't recollect that I did.

Q. Do you know Archibald Baxter? A. Yes, Sir.

Q. Of this city? A. Yes, Sir.

Q. Did you have any conversation with him touching the Woodhull scandal? A. Yes, Sir.

Q. When was it? A. On 'Change; somewhere in the neighborhood of the publication.

Q. Soon after the publication? A. Yes, Sir.

Q. What did you say to him about it? A. I don't recollect the precise language. I had two conversations with him.

Q. Did you say to him, in substance, that Mr. Beecher was not guilty of the charge made against him in the Woodhull publication? A. No, Sir. I think when I was pressed by Mr. Baxter I told him Mr. Beecher was a pure man.

Q. You told him Mr. Beecher was a pure man? A. Yes, Sir; that I thought he was, something of that sort.

Q. You say you were pressed by him. Didn't you volunteer to go to him? A. I volunteered the first time to go to him; the first conversation I had with him when I spoke to him about the Woodhull publication, in that conversation I told him Mr. Bowen was originally the author of the stories, that the stories originated with Mr. Bowen, that when Mr. Bowen had been asked to produce the evidence he had failed to do it, and that the differences between Mr. Bowen and Mr. Tilton had been settled; and about the Woodhull publication I said if it was true it was infamous, and if it was false it was diabolical, and if Mr. Beecher's life was not an answer I did not choose to make any; and the second conversation, I think Mr. Baxter came to me about it, and pressed me concerning it with some questions, and I think I told him in substance—I denied the guilt of Mr. Beecher, and told him he was a pure man—something of that sort.

Q. Did you say this to Mr. Baxter, in substance, "If you will only be patient you will be convinced that Mr. Beecher is as good a man as you (Baxter) ever believed him to be"? A. I really don't recollect the conversation. I didn't give him an opinion adverse to Mr. Beecher.

Q. Do you say you did not use that language to him? A. If I had any means of recalling the language I would do it; but I cannot recall the language.

Q. Will you say that you did not use that language to Mr. Baxter? A. No, Sir; I have not any recollection about it. I gave him a very high opinion about Mr. Beecher, however.

Q. Did Mr. Baxter ask you if you did not mean purity in a special sense? A. I don't recollect that.

Q. Did you make any reply? A. Make any reply to what?

Mr. Fullerton—To what you don't recollect?

The Witness—I could not.

Mr. Tracy—Didn't Mr. Baxter say: "There are different meanings to the word pure. Do you mean that Mr. Beecher is pure in the ordinary sense of that word? Was he chaste? Had he broken the seventh commandment?" A. I don't recollect that; I guess I gave him an idea that he had not broken the seventh commandment.

Q. What did you say to him? A. I don't recollect.

Q. Did Mr. Baxter ask you this question? A. I don't recollect whether he did or not, but I gave him a very high opinion of Mr. Beecher.

Q. Will you say he did not? A. If I had any recollection about it I would answer you.

Q. Will you say you have no recollection that he did not ask you this question? A. If I had any recollection about it I should, but I have not. I am giving you the impression I gave Mr. Baxter.

Q. I am asking you what Mr. Baxter asked you? A. If I could tell you I would.

Q. You cannot tell? A. No, Sir; I cannot tell.

Q. What reply did you make to these questions? [Laughter.] What reply did you make to Mr. Baxter? Did you not say in answer to these questions, "He is pure in that sense"? A. I don't recollect.

Q. "Not only is he now, but he always has been, a pure man, as I believe." Did you say that to Mr. Baxter? A. I don't recollect the answer.

Q. Will you swear you did not make that reply to him? A. If I had any recollection about it I would give it to you. I don't understand how I can answer it any more positively than I am answering it.

Judge Neilson—He simply wants you to say whether you recollect or not. A. I have not any recollection of the form of the answer.

Q. Then you cannot say he did not? A. I don't recollect those words, your Honor. The impression I gave him was that Mr. Beecher was a pure man.

Mr. Evarts—We are entitled to have an answer, it seems to us. It is the usual course of examination.

The Witness—If Mr. Baxter should say I did, I should say I did.

Mr. Evarts—He can tell us whether he can say he didn't say it.

Judge Neilson—Can you say you did not use those words? A. I cannot say I did not use those words.

Mr. Tracy—Do you know Edward A. Biden? A. Yes, Sir; I know him. I believe he is an elevator man.

Q. Is he a member of the Produce Exchange? A. Yes, Sir.

Q. Have you had conversations with him touching the Woodhull story? A. I believe I have had, once or twice; yes, Sir.

Q. When did you have those conversations? A. I think I have seen him about it about the time of the Woodhull publication.

Q. Where? A. On the Exchange.

Q. Did you speak to him on the subject of this scandal? A. Not at length; I avoided talking with him very long about it.

Q. You spoke to him on the subject? A. I believe so.

Q. Did you say to him: "It is false; there is not a word of truth in it, as far as Mr. Beecher is concerned?" A. I don't recollect that I used those words to him.

Q. Did you use anything in substance like that? A. I may have told him the story was untrue.

Q. Did you say it was untrue as far as Mr. Beecher was concerned? A. I don't recollect that.

Q. Did you say that there was not a word of truth in that? A. I don't recollect that neither.

Q. Did you use any such language in substance? A. I don't recollect that. I gave that impression to him, I think.

Q. Do you know J. Haynes Drake? A. Yes, Sir.

Q. Did you have any conversation with him? A. Yes, Sir.

Q. On the subject of the Woodhull publication? A. I believe I did, a short conversation with him.

Q. Where? A. On the Exchange.

Q. Did you say to him: (speaking of the Woodhull publication, with reference to Mr. Beecher) "It is a damned mess of women's fables?" A. No, Sir; I don't recollect using that language.

Q. Did you use anything in substance like that? A. No, Sir; I will tell you what I did say. I said if the story was true it was infamous, and if it was false it was diabolical, and if Mr. Beecher's life was not an answer to it I didn't choose to make any; and that is the substance of what I said to Mr. Drake.

Q. Do you remember that you did not say to him, "it is a damned mess of women's fables?" A. I think I should swear to the best of my recollection that I did not use that language.

Q. Did you use anything in substance like that? A. Not quite as weak as that; no, Sir.

Q. Did Mr. Drake say: "It would take a good deal of such testimony as that to convince me that Mr. Beecher is criminally guilty?" A. I don't recollect that he did.

Q. And in reply, did you say: "As to the criminality there is not in it a shadow of truth, and if Mr. Beecher's career is not a sufficient refutation to slanders from such a source, you don't deserve to have your mind satisfied"? A. I said the latter part; I don't remember the other part. The impression I gave to him was this, that if Mr. Beecher's life was not an answer to it I didn't choose to make any to him.

Q. Didn't you say, as to the criminality, "there is not a shadow of truth in it"? A. I don't recollect having said that.

Q. Will you swear you did not say that? A. I will swear I have not any recollection about it.

Q. Will you swear you didn't say it? A. How can I swear I didn't say it if I cannot recollect what I said? [To Judge Neilson.] Your Honor, am I answering properly, or not?

Judge Neilson—I think you have answered the question fairly.

Mr. Tracy—Did you say, in substance, so? Did you substantially use the words: "As to the criminality there is not a shadow of truth in it"? A. I don't recollect it.

Q. Anything like that, in substance? A. I can give you the substance of what I recollect, as near as I can recollect it.

Q. Do you know William B. Barber? A. Yes, Sir; I said I did a good while ago.

Q. Is he a member of the Produce Exchange? A. Yes, Sir.

Q. Did you have a talk with him on the subject of the Woodhull publication? A. Yes, Sir.

Mr. Morris—You have been all over that, Mr. Tracy.

Mr. Tracy—Oh, no, Sir.

Q. How soon did it occur after the publication? A. I think on the same day it happened.

Q. Did you say to him, speaking of the Woodhull publication, "There is not a particle of truth in the statement as against Mr. Beecher"? A. No, Sir; I did not say that to him; I recollect what I did say.

Q. Didn't you add, "Mr. Beecher is as pure a man as ever lived"? A. No, Sir, I didn't add that to him. Shall I tell you what I said to him? I can give you that conversation.

Mr. Fullerton—No, they don't want you to tell that.

The Witness—[To Judge Neilson]—Can I not tell, your Honor, what I said?

Judge Neilson—By-and-bye you will get a chance.

Q. Do you know A. H. Davis? A. I don't recollect him now.



Q. Of the firm of Barling & Davis? A. Yes, sir; I know him pretty well.

Q. Did you have a talk with him concerning the Woodhull publication? A. I don't recollect whether I did or not.

Q. At the Custom House and at your place of business? A. I don't recollect.

Q. Did he ask you "what does this Woodhull scandal mean—is there any truth in it?" A. I don't recollect speaking to him upon the subject at all.

Q. And did you reply, "There is not a word of truth in it. I think it is a shame, after Mr. Beecher has lived so long, that anybody should believe it?" A. I don't recollect having met Mr. Davis.

Q. Did you have any such conversation with him, in substance? A. I don't recollect having met him on the subject.

Judge Neilson—Or having had such a conversation? A. No, Sir, nor having having had such a conversation.

Mr. Tracy—Do you know Reuben W. Ropes? A. Yes, Sir.

Q. Did you have any conversation with him about November, 1873, touching the Woodhull publication? A. I don't recollect whether it was in November, 1873. My impression is that I had a conversation with him coming up Wall-st. Ferry here.

Q. Yes, Sir, that is the place. A. Well?

Q. Did he say to you: "I have never happened to meet you to speak with you since the affair of the Beecher-Woodhull publication. Did you go to Mr. Beecher's house with a pistol and demand a paper, as stated in Woodhull & Claflin's paper?" and did you say in answer to that, "It is a damned infernal lie?" A. I don't recollect whether I swore in his presence or not, but that is substantially what I said to him.

Q. And did you add, "You happen to know more of this case than I do. Now, is there any truth in regard to the scandal in regard to Mr. Beecher?" and did you reply "They are a pack of infernal lies?" A. I don't know whether I used that language or not, but I guess I gave Mr. Ropes the impression that Mr. Beecher was perfectly pure, and that the stories were lies.

Q. You said so, in substance? A. I gave that impression, whether I said it in substance. I don't remember the words.

Q. Do you know Edwin A. Studwell? A. A man that used to live South—a Florida improvement man?

Q. Yes, Sir. A. I don't know him very well. I have met him; I don't recollect having met him on this subject.

Q. Did you see him in Florida when you were there in 1871? A. Yes, Sir.

Q. And talked with him? A. Yes, Sir; that was before the Woodhull story.

Q. Yes, Sir, in 1871? A. Yes, Sir; in March, 1871, was it not? Yes, Sir; I met him in March, 1871, in Jacksonville.

Q. Did you have a talk with him in Florida in the Spring of 1871, in regard to the stories about Mr. Beecher and Mrs. Tilton? A. I don't recollect that I did.

Q. Did you say to him that you had all the papers in the case and letters relating to it, and that it was all a damned slander against Mr. Beecher? A. I don't recollect whether I did or not.

Q. Did you say anything in substance like that? A. I don't recollect having any conversation with Mr. Studwell about it.

Q. Did you say anything to him on that subject, leaving out

the oath, with the exceptions I have stated? A. Very likely I had that in if I talked to him. I don't remember having talked to him at all.

Q. Do you know Charles H. Cadwell? A. What is his business; provision man—is that it?

Mr. Shearman—115 Broad-st.? A. I don't know where his office is. I remember Mr. Cadwell, who used to be with Charles Parker. I don't know whether that is the man you refer to or not.

Mr. Tracy—That is the man. A. I don't remember having talked with him about it; I may have done so.

Q. You say you don't remember talking with him on the subject of the Woodhull scandal? A. I don't remember.

Q. Within a short time after its publication? A. I don't recollect.

Q. On a train of cars going to Boston? A. I don't recollect that I did. I recollect going on a train of cars to Boston, but I don't recollect talking with him about it.

Q. Shortly after the Woodhull publication? A. I don't recollect whether shortly after the Woodhull publication or not.

Q. On your way to Boston, speaking of this talk about Mr. Beecher in the Woodhull publication, did you say there was no truth in any of the rumors respecting Mr. Beecher? A. I don't recollect it.

Q. Did you say anything to him in reference to that? A. I don't recollect that I did; I recollect I didn't say anything against Mr. Beecher to him, if that will answer you.

Q. Did you tell him in substance this; that "If Mr. Beecher should the next day tell Plymouth Church all the facts pertaining to his life, there would not be a single person in it, who could impute a single blemish to the purity of their pastor?" A. I don't recollect having used that language.

Q. Did you use anything in substance like that? A. I don't recollect any conversation with Mr. Cadwell at all on the subject.

Q. Are you willing to say you did not say this to him? A. I am not willing to say I did not. I say I have not any recollection of talking with Mr. Cadwell. I would not have any objection to telling exactly what I did say, if I remembered it.

Q. Do you know Mr. Halliday, Assistant Pastor of Plymouth Church? A. Slightly; yes, Sir.

Q. Did you have any talk with him on the subject of the Woodhull publication? A. I don't know whether it was about the Woodhull publication or not. He came to me after the Deacons' meeting, and I talked with him about the stories against Mr. Beecher. Can you give me the date of the conversation?

Q. About Nov. 23d, 1872—December or November. A. Very likely there was some talk about the Victoria Woodhull publication.

Q. At your house? A. Yes, Sir.

Q. Did you tell him: "Mr. Halliday, I know all about this affair, if anybody knows?" A. I don't recollect the language. I conveyed to him the impression that Mr. Beecher was guiltless of any charge against him.

Q. I understand that; but I ask you definitely the question? A. I cannot tell you definitely.

Q. Did you tell him: "I know all about this affair; if anybody knows?" A. I don't recollect that.

Q. Do you recollect that you said that to him in substance? A. No, Sir; I don't recollect that I said it in substance.

Q. And did you add, bringing your hand down on the table: "I know he is guiltless?" A. I don't know whether I brought my hand down on the table at that point or not; but I know, when I brought it down, I said "it was a damned shame for the Deacons to be digging into a scandal that had been settled between the parties."

Q. Did you say that he was guiltless? A. I think I did; yes, Sir.

Q. Did you add in that conversation with Mr. Halliday, "I am not a member of your church, but my wife is. Do you suppose that if Mr. Beecher is a bad man I would allow him to sit there at my table with my wife?" A. My impression is that I didn't say that part.

Q. Your impression is that you didn't say that part? A. Yes, Sir, my impression is that I didn't.

Q. Will you swear you didn't? A. Yes, Sir; I will swear that my impression is that I didn't.

Q. Did you or not say it? A. I am telling all I know about it—my impression about it.

Q. Will you say you didn't? A. How can I say that when I don't recollect? I am giving you my best recollection.

Q. Can you say you didn't? A. My recollection is not—that I didn't; that is my best recollection, that I didn't.

Q. Are you ready to swear that you didn't say those words? A. I am ready to swear that to the best of my recollection I didn't say those words. Is that a correct answer, Mr. Evarts?

Mr. Evarts—Answer according to your conscience.

The Witness—My conscience directs the answer, but is the phraseology correct? [Laughter.]

Mr. Tracy—Did you add further: "Why, Mr. Halliday, Mr. Tilton is friendly to Mr. Beecher." Did you say that? A. I don't recollect whether I did or not.

Q. "When he (Tilton) came back from his campaign in New-Hampshire on the morning after election, he sat precisely where you did on the sofa, and when Mr. Beecher came through that door he (Tilton) sprang to his feet and went to him, and, with both hands, shook hands with him in *this* way (showing how), and expressed his sorrow and intense regret at the appearance of that, and disclaimed all knowledge of it, and offered to do anything he could to repair the mischief?" A. Something of that sort I said to him. I don't remember the two hands part of it.

Q. Did you say anything in substance like it? A. How is that?—taking Mr. Beecher's hands in both of his?

Q. Yes, Sir. A. I don't recollect saying that, but I think very likely I recited to him the substance of the interview between Mr. Beecher and Mr. Tilton in November.

Q. Substantially you stated that? A. Yes, Sir, substantially like that—something like it—and I think I told him that Mr. Tilton was friendly to him; I think so.

Q. Did you also say this [referring to the Woodhull publication]: "I have denied this. Tilton denied it. Mrs. Stanton has denied it," and didn't you name another person who had denied

it, and then add, "All have denied but Pauline Davis, and she is in Europe and cannot deny it, because of her absence. Now, what more can be done?" A. I think I said something like that.

Q. Did you, in substance, say that? A. Something like that.

Q. Do you know Mr. Swan, of the firm of R. Moore & Co.? A. I don't recall the name.

Q. You know Mr. Swan? A. I know Mr. Swan of Grinnell, Minturn & Co.

Q. Did you meet him in Armour & Co.'s? A. I don't know the name of Mr. Armour's partner, whether it is Mr. Swan or not.

Q. Do you know Mr. Armour's partner? A. I know him by sight; I don't remember his name.

Q. Did you have a talk with him on the subject of your difficulty in this conversation? A. The difficulty is in recollecting the name of Mr. Swan.

Mr. Tracy—I will try if I can identify him any more.

The Witness—I am almost ashamed to say I don't know that gentleman's name, because I know him so well.

Mr. Tracy—Do you know the man I refer to as Mr. Swan? A. I don't recollect.

Q. Do you know of one of that name? A. I don't know that I know of one of that name.

Q. Do you know a Mr. Swan with whom you have talked about your difficulties? A. I really don't know a Mr. Swan with whom I have talked, and if this partner of Mr. Armour's is the Mr. Swan you mean, I don't remember of having talked with him. Perhaps you will get along with that.

Q. Do you know a Mr. Swan with whom you are on terms of intimacy? A. No, Sir; only an acquaintance of Grinnell, Minturn & Co's. I have known him a great many years.

Q. Did you talk with him about your difficulties with Mr. Beecher? A. No, Sir, not that I recollect. There is no Mr. Swan with whom I have talked that I know of.

Mr. Evarts—We will find out more about Mr. Swan.

The Witness—Well!

Mr. Evarts—It is the hour of adjournment. I am very happy to state to your Honor that we have very few matters to go on with in reference to this witness.

Mr. Fullerton—We think this matter ought to be concluded this afternoon.

Mr. Evarts—We think not. We want to adjourn at the usual hour.

Mr. Beach—I agree with your proposition.

The Witness—I do not.

Mr. Fullerton—That proposition must be mine then, I think.

Mr. Beach—Yes, Sir.

Mr. Fullerton—I think we ought to finish the cross-examination of this witness to-day; I think it ought to be concluded to-day. Your Honor was disposed to conclude it on Friday, and they said they would not probably occupy the whole of to-day.

Judge Neilson—Still, I make a good deal of allowance for the circumstance that Mr. Tracy was called into the cross-examination without preparation, and he might not, therefore, be able to proceed readily as he otherwise would.

The Witness—[To a reporter.] Oh, dear!



Judge Neilson—[To the audience.] I wish gentlemen would keep their seats. [To the Jurors.] The Jury will please be in their places at 11 o'clock to-morrow morning.

Mr. Mallison—[The Clerk.] The Court now stands adjourned until Tuesday morning at 11 o'clock.

## TWELFTH DAY'S PROCEEDINGS.

### MOULTON'S TENTH DAY.

**STRONG EFFORTS OF THE COUNSEL OF MR. BEECHER TO GET IN A LETTER PREVIOUSLY RULED OUT—A SHARP CONTACT OF LEGAL WITS.**

Mr. Tilton entered the court-room alone, as usual. Mr. Beecher arrived a few moments afterward, followed by his wife and two sons, and the members of the Plymouth delegation, now thinner and less demonstrative than any day before. The reason of Mr. Beecher's absence on the day previous was a severe cold. As the court-room was uncomfortably cool, Mrs. Beecher did not remove her bonnet or shawl during the day. The absence of Mrs. Tilton and her lady friends, who have not been present since Friday, was again the occasion of remark, but the cause was seemingly unknown to any one.

Ex-Judge Porter appeared in Court and was heartily welcomed by the counsel for the plaintiff and defendant. He did not resume the examination but busied himself all day in arranging the papers of the defense. Mr. Porter has not entirely recovered and was looking unwell on Tuesday. One of the pleasing incidents of the day was the courteous inquiry by Judge Neilson from the bench as to the health of ex-Judge Porter. It is hard to say whether Judge Porter was most complimented or confused by the manner in which, in the midst of the proceeding, he was singled out for judicial notice. The counsel on both sides were engaged at the moment in looking up letters which had been called for, and there was perfect stillness in the court, and attention was fixed on no special subject. The minute he arose, therefore, to step toward the bench Mr. Porter became the center of observation and of interest, and, as if recognizing this, he appeared to hesitate and palpably blushed. A smile passed over the features of his associates, who recognized the awkwardness of Mr. Porter's situation, and rather enjoyed his perplexity. The ex-Judge, notwithstanding his frequent prominence in courts of all grades, evidently suffers embarrassment still under too marked public notice, and would shirk rather than seek it.

The most painful incident of the trial occurred

on Tuesday morning shortly after Mr. Moulton took the stand, and for the first time, perhaps, during the whole of his long examination Mr. Moulton was regarded with other feelings than those of admiration by his friends and dislike by the friends of Mr. Beecher. He became to all a subject of sympathy, for the greatest bereavement a man can suffer—the loss of a loving mother—was communicated to him while yet a witness. Soon after the first questions had been answered, Mr. Moulton was informed that a messenger with important intelligence awaited him in the chambers of the City Court, adjoining Part II. Mr. Moulton was excused by the Court, and utterly unsuspecting of what he was to be told, (for he was not even aware his mother had been ill), he left the court-room. Ex-Judge Fullerton communicated the intelligence to the Court during the few minutes Mr. Moulton was in the ante-room, so that when Mr. Moulton returned all eyes were fixed upon him, and the momentary buzz of conversation which had followed the announcement suddenly broke off. Mr. Tilton watched anxiously the face of his friend to observe the effect of the news upon him. Mr. Beecher bent forward in his chair, gazing intently at him, while Mrs. Beecher leaned her head upon her right hand, and looked sadly and almost with solicitude upon her husband's enemy. Mr. Moulton exercised his great control over his nerves, and before his counsel could communicate to him the decision of the Court that he could at once retire, and finish his examination at a later day, he loudly announced that he was ready to go on.

Mrs. Moulton died suddenly about 6 o'clock on Tuesday morning at the residence of her husband No. 580 Lexington-ave. She had been ill only a few days with pneumonia, contracted by imprudent exposure to the cold weather. She was 68 years old, and usually enjoyed very good health. By going out of doors in her slippers on Thursday of last week, she caught a severe cold which confined her to her room. She was attended by Dr. Packard, and on Sunday appeared to be much better, although on account of her great age her physician feared a relapse. On Monday she suffered from severe spasms in the breast, and Dr. Packard called in Dr. Flint for consultation. Monday night Mrs. Moulton again appeared to get much better, and during the night she slept lightly at intervals. Toward daylight she grew rapidly worse, and died seemingly without pain at 6:20 a. m. on Tuesday. Naturally Mrs. Moulton felt great interest in the Beecher-Til-

ton trial in which her son plays so prominent a part, and during her sickness she worried a good deal on account of it. Not more than 12 hours before her death she asked anxiously after the reports of her son's cross-examination in the evening papers, and conversed with her husband in regard to it. It is thought that the strain of her anxiety and worry about the trial, in her weakened condition, may have indirectly hastened her death.

#### LEGAL PASSAGES AT ARMS.

The evidence brought out in the redirect examination of Mr. Moulton was merely the fringe of the texture of Mr. Moulton's testimony. Mr. Fullerton went according to no almanac, but skipped from the events of 1870 to those of 1874, and back again, as rapidly as the arguments and exceptions of the opposing counsel would allow. Mr. Moulton's remarkable performance on Tuesday of repeating Mr. Tilton's introduction of Mrs. Woodhull at Steinway Hall, several years ago, almost word for word, was regarded with surprise and admiration and a ripple of laughter came from the audience as the closing remarks were recited, viz.: "She may be a fanatic or a fool, but I would rather be considered both in one than to deny to a woman the freedom of speech."

The canceled notes of Mr. Tilton to Jackson S. Schultz, J. C. Southwick, Franklip Woodruff, J. W. Robinson, John W. Mason and Francis D. Moulton, for sums of from \$500 to \$1,500 were read. Those notes were, it was shown, canceled and returned as a testimonial to Mr. Tilton. The subjects regarding the picture of Mr. Beecher in Mr. Moulton's house, the alleged hostility of the witness toward the defendant, the conference regarding the production of Mr. Beecher's letters before the Plymouth Investigating Committee, and many other familiar topics were referred to. Every step was contested hotly by Mr. Evarts, and more than once the lawyers became so entangled in their exceptions and protests that it engaged all the ingenuity of Judge Neilson to straighten them out.

Tuesday witnessed one of the most adroit pieces of cross-examination which the trial thus far has developed. It was conducted by Mr. Tracy, but directed by Mr. Evarts and aided in by Mr. Shearman. For some reason or other the counsel for the defense were extremely solicitous of getting before the jury a letter of W. T. Clark of *The Golden Age*, which on the direct examination a too hasty objection on their part had ruled out.

Its importance was not very apparent to the audience, unless the fact that it emphasized the financial embarrassments of Tilton about the time that the policy of "Grace, Mercy and Peace" was abandoned, about a year ago. Whatever the reasons, the counsel appeared determined to get this letter in, and as often as the Judge ruled that it had not been sufficiently identified—and he so ruled three times—Mr. Tracy returned to the attack with a question or two, and Mr. Evarts thereupon based a new argument. At last, evidently abandoning the hope of securing its admission, Mr. Tracy began a series of questions, each of which embodied one of the many declarations contained in Mr. Clark's letter, so that in the end the jury heard the whole letter read. Mr. Tracy took pains to do this as openly as possible, making no effort to conceal from the opposing counsel the fact that he was literally reading the letter; the same tactics had been employed by the counsel of Mr. Tilton, and Mr. Tracy was therefore not afraid of interruption.

The sharpest and most amusing passage of arms that occurred among the lawyers on Tuesday was between Mr. Evarts and Mr. Fullerton, and it illustrates fairly the quickness of thought sometimes displayed in the court-room. Just before the closing of the cross-examination there was a long pause. Its length wearing out at last the patience of Mr. Fullerton, he asked the Court if there was no way to make the other side go on.

"How better can we go on?" asked Mr. Evarts.

"Why, by going on," sharply replied Mr. Fullerton.

"Perhaps you would go on if you were on our side," said the defendant's counsel.

"No," significantly rejoined Mr. Fullerton, "if I were on your side I would not go on."

#### THE PROCEEDINGS.

Ex-Judge Porter was again in his place among the defendant's counsel, but he took no active part in the morning's proceedings. The closing hours of the cross-examination of Mr. Moulton—conducted as usual by Gen. Tracy—were mainly occupied by the introduction of letters in Mr. Moulton's possession not previously put in evidence. Mr. Shearman read most of these papers. The Perkins letter was the first produced

#### ANOTHER BATCH OF LETTERS INTRODUCED.

Francis D. Moulton was recalled, and the cross examination continued.

Mr. Tracy—Mr. Moulton, will you hand to us now any letters that you have from Mr. Beecher which have not been given in evidence? A. All letters that I have, Sir?



Q. Yes, Sir; all the letters that you have from Mr. Beecher?

Mr. Morris—I will select them out, those that I have here.

Mr. Tracy—With the envelopes, if you have them, in which they were sent.

Mr. Beach—I think, your Honor, we ought to inquire of the counsel for what purpose they demand the possession of these papers. They are addressed to Mr. Moulton, and some of them we may want to use in the course of the trial.

Mr. Evarts—We will hand them back; we expect to restore them to the hands from which we receive them.

Judge Neilson—They expect to restore them for use.

Mr. Evarts—Yes, Sir. They are papers which do not belong to the plaintiff, but belong to the witness, and which he brings here under subpoena.

Judge Neilson—While you are looking for the papers I would like to say to Judge Porter, whom I am very glad to see with us this morning, that while continuing this cross-examination of Mr. Moulton by Mr. Tracy, on the ostensible ground that to break up the cross-examination would break the continuity of the testimony, the real motive was lest the Judge should find some of his work unfinished, and be tempted to return sooner than he ought to to his labors. Do you find the papers, gentlemen?

Mr. Morris—Yes, Sir.

Mr. Evarts—We have some of them.

Mr. Morris—We are marking them as fast as we can.

Mr. Tracy—I will go on with some other subject. There is one question, your Honor, which I asked last night, to which I did not receive an answer on account of the inability to identify the proposed witness.

The Witness—I have identified the witness.

Mr. Tracy—I should have taken that up this morning, but I have not the book here.

The Witness—Mr. Swan is the one.

Mr. Tracy—Yes, Mr. Swan.

The Witness—I sent over to New-York this morning about it. I found out that the partner of Mr. Armour was Mr. Swan.

Mr. Tracy—We will not talk about that, Mr. Moulton, until I get the book here, so we can close it when we enter upon it.

The Witness—All right, Sir.

Q. I hand you a letter dated Feb. 13th, 1871, which I ask you to examine. [Handing witness a letter.] Did you ever see that letter before, Mr. Moulton? A. Yes, Sir; I think I have.

Q. Where did you first see it? A. It was brought to me by Mr. Beecher, to my house in Clinton-st., I believe.

Q. Was it the subject of conversation between yourself and Mr. Beecher? A. Yes, Sir.

Q. Was Mr. Tilton present at that conversation? A. I don't think he was.

Mr. Tracy—I will introduce that letter.

Mr. Shearman—[Reading.]—

Box 44, STATION D,  
NEW-YORK, February 13th, 1871.

MY DEAR UNCLE: After some consideration, I decide to inform you of a matter concerning you.—

Mr. Beach—What is it? Let us see it. [Taking the letter.]

Mr. Shearman—It is a letter written by Mr. F. B. Perkins to Mr. Beecher.

Mr. Tracy—Mr. Perkins is the nephew of Mr. Beecher, is he not? A. Mr. Beecher told me he was.

Box 44, STATION D,  
NEW-YORK, February 13, 1871. }

MY DEAR UNCLE: After some consideration I decide to inform you of a matter concerning you. Tilton has been justifying or excusing his recent intrigues with women by alleging that you have been detected in the like adulteries, the same having been hushed up out of consideration for the parties. This I know.

You may, of course, do what you like with this letter. I suppose such talk dies quickest unanswered. I have thought it best to let you know what is being said about you, and by whom, however; for, whether you act in the matter or not, it has been displeasing to me to suppose such things done without your knowledge. I have thought other people base, but Theodore Tilton has in this action dived into the very sub-cellar of the ver back-house of infamy. In case you should choose to let him know of this, I am responsible, and don't seek any concealment.

Very truly yours, F. B. PERKINS.

TO REV. HENRY WARD BEECHER.

P. S.—I can't say Tilton said "adulteries." He was referring to his late intrigues with Mrs. — and others, however he may have described them. What I am informed of is the excuse by implicating you in "similar" affairs. F. B. P.

[Marked "Exhibit D, 48."]

Mr. Shearman—I will say to your Honor that the name is mentioned in full here, but I have complied with your Honor's direction.

Mr. Tracy—You say that yourself, Mr. Tilton and Mr. Beecher consulted as to the answer that should be made to that letter? A. I didn't say that, Sir.

Q. Ah! I misunderstood you. Was that the fact? A. No, Sir.

Q. Were you present when the subject of what answer should be made to it was discussed and considered? A. Yes, Sir; with Mr. Beecher alone.

Q. Not with Mr. Tilton? A. Not with Mr. Tilton.

Q. Did Mr. Tilton take any part in the discussion of the answer that should be made to it? A. I told Mr. Beecher that I would submit his answer to Mr. Tilton, and he promised to wait until I could consult Tilton about it, but he sent the answer, I found afterwards, before I saw Mr. Tilton.

Q. Did you see Mr. Tilton and consult with him in regard to the answer? A. I believe I did; my recollection is that I did.

Q. Did he dictate an answer for Mr. Beecher to that letter? A. No, Sir, he told me substantially what he wanted to be his answer.

Q. And you took it down? A. Yes, Sir; I wrote it down.

Q. At the time? A. I don't remember whether it was at the time or not. I wrote down substantially what he said.

Q. [Handing a book to the witness]—Look at that book and see if it refreshes your memory on the subject? A. I remember substantially what was in the book. [The witness refers to the book.] It does not particularly refresh my memory.

Q. [Handing letter to witness]—Is that Mr. Beecher's answer to the note of Mr. Perkins? A. Yes, Sir; I believe that is the answer, and there is also a note there that Theodore Tilton—

Mr. Tracy—Dictated to you? A. What he expressed or dic-

tated, I wrote ; I do not remember whether he dictated that or not.

Q. You wrote it down from his dictation ? A. From what he told me ; I don't think I wrote from his dictation.

Q. And that is what he thought the answer should be ? A. Yes, Sir ; that is substantially what I suppose he thought the answer should be.

Mr. Shearman—The following is the answer which Mr. Beecher wrote :

FEBRUARY 23, 1871.

MY DEAR FRED: Whatever Mr. Tilton formerly said against me—and I know the substance of it—*he has withdrawn*, and frankly confessed that he had been misled by the statements of one who, when confronted, backed down from his charges.

In some sense I am in part to blame for his indignation, for I lent a credulous ear to the reports about *him*, which I have reason to believe were exaggerated or wholly false. After a full conference and explanation, there remained between us no misunderstanding, but mutual good will and reconciliation have taken the place of exasperation. Of course, I shall not chase after rumors that will soon run themselves out of breath if left alone. If my friends will put their foot silently on any coal or hot cinders, and crush them out, *without talking*, the miserable lies will be as dead in New-York in a little time as they are in Brooklyn. But I do not any the less thank you for your affectionate solicitude, and for your loyalty to my good name. I should have replied earlier, but your letter came when I was out of town.

I had to go out again immediately. If the papers do not meddle, this slander will fall still-born—dead as Julius Cæsar. If a *sensation* should be got up, of course there are enough little enemies to fan the matter and create annoyance, though no final damage.

I am, your affectionate uncle, H. W. B.

Mr. Shearman—The note which Mr. Tilton prepared as a substitute for this, to be sent to Mr. Perkins, is as follows, indorsed on the back of the same letter in Mr. Moulton's handwriting:

An enemy of mine, as I now learn, poisoned the mind of Theodore Tilton by telling him stories concerning me, T. T. being angered against me because I had quoted similar stories against him, which I had heard from the same party, retaliated. Theodore and I, through a mutual friend, were brought together, and found upon mutual explanations that both were the victims of the same slander.

#### MOULTON APPRISED OF HIS MOTHER'S DEATH.

Mr. Fullerton—Will your Honor permit the witness to step to the door ? A messenger wishes to see him.

Judge Neilson—The suggestion is that the witness step to the door.

Mr. Evarts—We ask him to wait for a moment, not for any new subject, but only to see whether we have read the whole of this.

Mr. Shearman—The following additional words, leaving the paper unfinished :

"Theodore has taken pains to say to parties that"—

The Witness—Shall I read it ?

[Mr. Shearman hands the letter to the witness.]

The Witness—That is my handwriting.

Judge Neilson—Can you read it ?

Mr. Evarts—It has been read.

Mr. Tracy—Do you remember about it now, on looking at it ?

A. No, Sir ; I don't remember whether that sentence was concluded or not. That is what you are asking me about—the last sentence ?

Mr. Tracy—Yes, Sir.

The Witness [To Judge Neilson]—Shall I step to the door now, your Honor ?

Judge Neilson—Yes, Sir.

Mr. Fullerton—May it please your Honor, I suppose the witness will not be able to return to complete his cross-examination, or to subject himself to the re-direct examination. The sudden and unexpected death of his mother makes it necessary that he should, I suppose, give attention to his family, which is now afflicted. It occurred a few minutes since.

Judge Neilson—His mother died this morning ?

Mr. Fullerton—Yes, Sir.

Judge Neilson—Has he just learned the fact ?

Mr. Fullerton—He has not learned it yet.

Judge Neilson—Then, gentlemen, it will have to be deferred.

Mr. Evarts—During the last moment of the witness's examination the intelligence was conveyed to my learned friend, Judge Fullerton, not having yet reached the witness, and he spoke to me on the subject, and the result is this communication to him, which, of course, will require that your Honor and ourselves should accede to whatever his wishes may be in regard to it.

Mr. Fullerton—I suppose it had better be deferred to some future day in the course of this trial, when he can return.

Judge Neilson—Of course that will be very proper.

The Witness—I have just heard of my mother's death, and I will continue this examination if it does not take too long.

Judge Neilson—It is agreed that it shall be deferred.

(The Witness takes the witness stand.)

Judge Neilson—Nothing will be gained by your continuation of the examination now.

Mr. Fullerton—The witness thinks he had rather finish it now, so as not to be under the necessity of returning.

Judge Neilson—It will be necessary that the witness shall return, perhaps, in a day or two. I think this had better be deferred.

Mr. Evarts—Of course, as we suppose, it will be necessary ; that the entire exhaustion on one side or the other of this witness cannot be proceeded with ; and that being so, we would prefer that it should cease now, rather than at another time.

Mr. Beach—I have made a request to the witness, that he should overcome his private and personal grief, out of regard to a public duty. I think it is desirable that his cross-examination should close, and he has yielded to my request, and will conclude the examination.

Judge Neilson—Have you agreed about the re-direct examination, when that shall be concluded ?

Mr. Shearman—Mr. Beach says he will go on with the re-direct examination also.

[Paper heretofore shown witness marked "Exhibit D., 47."]

Mr. Tracy—The witness may not be aware of the length of time that his examination may continue.

The Witness—I will wait, Sir, until it is finished.



## THE CROSS-EXAMINATION CONTINUED.

Mr. Tracy—Now, Mr. Moulton, do you know how Mr. Tilton came by the copy of Mr. Beecher's letter of Feb. 5, 1872? A. Do I know how he came by a copy of it?

Q. Yes, Sir. A. I do not. That is the letter of Feb. 5, 1872?

Q. It is the long letter of Feb. 5, 1872? A. I don't know.

Mr. Shearman—It is the one that refers to the church, the newspapers and the book.

The Witness—Let me look at it, and perhaps I can tell you. [Mr. Shearman hands witness the book, which he examines.] I don't know how he came by a copy of it.

Q. Did you give him a copy of it? A. No, Sir; I never gave him a copy of it.

Q. Did you ever permit him to make a copy of it? A. I don't remember of his having taken a copy in my presence; I think I read the letter to him, or may have handed it to him to read.

Q. Could he have made a copy of it in your presence without your knowing it? A. I don't know; I don't recollect that he ever made a copy of it in my presence.

Q. That is not exactly the question that I asked? A. I don't think he could.

Q. Was he not a stenographer and short-hand writer? A. Yes, Sir; a short-hand writer.

Q. Was it not his habit to take a copy of these papers in short-hand? A. No, Sir; I don't recollect that it was.

Q. He could not have taken it in short-hand in your presence, when you were reading it, without your knowing it? A. Not without my knowing; I might not recollect now that he did.

Q. Do you mean to say you never intentionally permitted him to have a copy of that letter of February 5, 1872? A. I never intentionally permitted him to have a copy of it.

Q. Or to take a copy of it? A. Or he to take a copy of it; I may have read it to him, or may have handed him the paper, and if he wanted a copy of it, I might have allowed him to take it.

Q. You think you would have allowed him? A. I might have.

Q. Do you recollect of handing it to him? A. I don't recollect of handing it to him; I may have done so, however, for him to read.

Q. Can you tell us how he obtained a copy of the Beecher letter of June 1, 1873? A. I cannot tell. I read him that letter.

Q. When did you read it to him? A. I don't know. I may have read it to him on Sunday. I don't recollect when I left it with him precisely.

Q. Did you leave it with him? A. I don't think I did.

Q. Do you recollect whether you did or not? A. I don't recollect whether I did or not.

Q. How did he obtain a copy of Mr. Beecher's letter of Feb. 7, 1871, addressed to you? A. What was that letter?

Q. That is the letter where three letters were written all on the same day—two by Mr. Beecher, and one by Mr. Tilton. A. I know there were three letters dated on the same day. Which is the one you refer to?

Q. I refer to Mr. Beecher's letter to you. How did he get a copy of that letter? A. I don't know how he got a copy of it.

Q. You never gave him a copy of it? A. I never recollect doing so.

Q. Nor permitted him to make it? A. I don't know that I did. I was in the habit of showing him letters.

Q. Were you in the habit of leaving them with him? A. No, Sir; I was not in the habit of leaving them with him.

Q. Do you remember of leaving Mr. Beecher's letter with him? A. I don't recollect having left any letter with him; I may have done so though.

Q. Do you know how he obtained a copy of Mrs. Hooker's letter to Mr. Beecher which Mr. Beecher left with you? A. My impression is, Mr. Beecher gave him the letter itself.

Q. Do you know that fact? A. My impression is that he did; my impression, rather, is that he did. We were all in consultation about it together; and that is my impression that Mr. Beecher gave him that letter—showed it to him.

Q. And left it with him? A. And left it with him.

Q. Did you get it from Mr. Tilton or from Mr. Beecher? A. I forget whether I got it from Mr. Tilton or Mr. Beecher; but they were both consulting together about the letter of Mrs. Hooker.

Q. Did Mr. Tilton make a copy of it that day? A. I don't recollect.

Q. Was it left with you that day? A. I don't recollect; I think it was given to Theodore Tilton; I won't be certain, but I think it was.

Q. Mrs. Hooker's letter of Nov. 1st, 1872, I am talking about now. A. The Hooker correspondence, whatever it was, was the subject of discussion between Theodore Tilton, Mr. Beecher and myself, when the letter was read; whether he made a copy of it, I don't know; I certainly was present at part of the interview.

Q. Do you know when that interview was? A. I cannot remember the date. It was about the time that—; it was before Mrs. Hooker came to town.

Q. You don't remember the date? A. No, Sir; I don't remember the date; the date Theodore Tilton went up-town.

Q. I didn't ask you that. A. I am trying to fix it for you.

Q. Was Thomas K. Beecher's letter present at that time? A. My impression is that it was; I won't be certain about it.

Q. And you don't know whether Mr. Beecher left these letters with you that day, or whether he left them with Mr. Tilton, and you got them from Mr. Tilton? A. We were all together; I don't recollect whether he gave them to him or gave them to me.

Q. Who took these papers at the breaking up of the interview, you or Tilton? A. My impression is it was Tilton; I won't be certain about it; Mr. Beecher may have taken some at that interview and brought them back—something of that sort.

Q. Do you mean to say you have no recollection on the subject? A. I have only an impression. My impression is Mr. Tilton had those letters; that is my impression about it. He was certainly as much a party to the Hooker business as I was.

Mr. Tracy—I am not asking that.

The Witness—I am only trying to give you the truth of the matter.

TILTON'S FOOTPRINTS IN ALL THE CORRESPONDENCE.

Q. Now, of the numerous letters and papers that you have written for publication by Mr. Beecher, the letters that you have submitted to him for publication, which have not been published by him—

The Witness—Letters which I have submitted to who for publication?

Mr. Tracy—Letters or statements to Mr. Beecher. During this controversy of four years, will you name any paper or document that was not either written by Mr. Tilton or prepared by you in his immediate presence prior to the time of your consultation with Gen. Butler in 1874?

Mr. Fullerton—We object to that. They have gone over each letter and each statement and each document with great particularity in that respect, and asked questions in regard to the individual documents; so that exhausts the subject.

Mr. Evarts—This question is intended to exhaust that subject undoubtedly. Nothing has been overlooked.

Mr. Fullerton—I object to the subject being exhausted after it is exhausted.

Mr. Evarts—I think not. We want to know if there is any letter that was not written in the manner that this question asks; if so, we would like to see it.

[The Court directed THE TRIBUNE stenographer to read the question, which was done.]

Mr. Beach—That question calls for the witness to give a summary of the testimony already given, and it is not within the recollection or power of any man to do it.

The Witness—I cannot do that.

Mr. Evarts—We asked him to point out another letter.

Judge Neilson—It is a very long question, and has reference to a great number of papers, each paper having been already the subject of examination.

Mr. Tracy—Most of them have been.

Judge Neilson—I do not conceive the witness could well or safely answer it either way. At any rate, upon the ground that you have been over the individual papers, each speaking for itself, and the testimony in connection with each, I rule out the question.

Mr. Evarts—Your Honor will note our exception.

Mr. Tracy—Have you any paper in your possession, Mr. Moulton, draft or copy, which has not been prepared by Tilton, or by you in his immediate presence?

Mr. Fullerton—We make the same objection.

Mr. Tracy—I mean papers that were intended for Mr. Beecher either to publish or sign.

Judge Neilson—And you mean other than those which have been produced?

Mr. Tracy—Yes.

Judge Neilson—He may not understand the question

The Witness—I have not any paper that I have not sought to produce.

Judge Neilson—He means have you any others than have been produced?

The Witness—I have not that I know of.

Q. Now, Mr. Moulton, I call your attention to this book

again, pages 304 and 305. I call your attention to the proposed statement. A. "Moulton's proposed statement for Mr. Beecher," Sir?

Mr. Tracy—Yes, Sir. A. Yes, Sir.

Q. That is the proposed statement that you asked him to make after the Bacon letter, admitting an offense? A. Which I submitted to him for his judgment, Sir, after the Bacon letter

Q. Now, Sir, did you offer him on that occasion that if he would make that statement, admitting an offense, you would sustain it, and would burn all the papers that you had in your possession? A. I don't think I stated it in that way, Sir. I said that—if you will allow me to tell what I did say to Mr. Beecher, according to the best of my recollection—is that in order?

Mr. Evarts—No.

The Witness—I will undertake to state exactly what I said, to the best of my recollection.

Q. Will you give me the book? I think I can frame a question. Have you read what appears on page 305? A. I have not; no.

Q. Just refresh your memory by that. [Handing book to witness.] A. I think very likely; this suggests to me that I may have said something of that sort, Sir.

Q. Very well; I will ask you—just give me the book and I will frame my question.

The Witness—On July the 5th that was; there are two different interviews; I didn't say that at the first interview, Sir.

Q. After you had presented to him this proposed statement which you asked him to make, which is "Exhibit 34," did you not on July 5th say to Mr. Beecher—

Judge Neilson—Mr. Tracy, he didn't say he asked him to make it; perhaps you had better amend the question.

Mr. Tracy—I understood that he had said that before.

Judge Neilson—No, the witness don't say he asked him to make it.

The Witness—I said I submitted it to his judgment.

Judge Neilson—He said he submitted it to him.

Mr. Tracy—Very well; after you had submitted this proposed statement to Mr. Beecher for him to make? A. I said I thought it was best; I thought it would be a good thing for him to do to make that statement—not for him to make—

Q. Now, I am only calling your attention to the time it was submitted; now, after that I asked you? A. I am only asking that the question be properly framed, Mr. Tracy.

Q. Did you not say to him that Mr. Tilton had committed himself to a settlement if that is said, and "if it is said and he demands anything further, so far as I am concerned, I shall destroy every paper and everything I have bearing on the subject, and if he wants to open the thing he will have to open it without any aid or confirmation from me"? A. I think very likely I said something of that sort to him, Sir.

DR. STORRS CRITICISED.

Q. In the course of your direct examination you have referred—there has been introduced a letter from Mr. Beecher to you, referring to Dr. Storrs and to his action during the councils; did you have a conversation with Mr. Beecher



just prior to the writing of that letter by him in which you stated to him in substance, that Dr. Storrs had written a letter to Mr. Tilton, advising him in advance of what he was to say in his speech, and saying that he should have to defend Mr. Beecher and appear to criticise him, Tilton, severely? A. I don't think I mentioned any letter, Sir.

Q. Well, did you say that Dr. Storrs had said that to Tilton? A. I said that I had understood so—at least not said it to Mr. Tilton. I beg pardon.

Q. You understood — A. That some such message had been sent.

Q. That Dr. Storrs had said that of Tilton? A. Yes, Sir.

Q. Now, didn't Dr. Storrs say, or didn't you report to Mr. Beecher, that Dr. Storrs had said that he had communicated to Mr. Tilton the fact that he should criticise Mr. Tilton in his speech and defend Mr. Beecher in the Council, or appear to defend him? A. I said to Mr. Beecher that some such notice as that had been sent to Tilton; some such message; he had received some such communication from somebody, simply in the nature of hearsay, Sir; I had no authority for that particularly, except the person who told me.

Q. And didn't you say to Mr. Beecher that that was an act of insincerity on the part of Dr. Storrs? A. I think I said if that was true it was insincere; I thought it was.

Q. You said if that was true of Dr. Storrs you thought them insincere? A. Yes, Sir; I did, too.

Q. How long did that conversation between you and Mr. Beecher precede the writing of this letter? A. I really don't recollect.

Q. Well, was it a day or two? A. I don't recollect, Sir; I don't remember that it preceded it even; I don't remember even that it preceded it.

Q. Didn't you, in talking with Mr. Beecher, quote Dr. Storrs as saying that while he should attack Mr. Tilton, that that would be all flummery? A. No; I did not use any such language as that, that that would be all flummery.

Q. What did you say? A. I don't recollect, Sir, precisely what I did say; I don't think I said anything like that. I think I have stated substantially what I said to Mr. Beecher—all that I recollect.

Q. Repeat it again, please, consecutively? A. Well, won't the stenographer read it?

Q. Won't you repeat it? A. I will try to.

Judge Neilson—The simple question is what you said to Mr. Beecher about Dr. Storrs? A. All that I remember, your Honor, is that I said to Mr. Beecher that I had heard that Dr. Storrs had sent that communication to Mr. Tilton; that it would be necessary to be severe upon him, or something of that sort; and I said that I thought there was insincerity in that; that is the substance; all that I recollect.

Q. You said that to Mr. Beecher? A. I think I did, Sir, substantially.

Q. By whom did you understand the message had been sent, or the communication had been sent by Dr. Storrs? A. Well, I don't recollect—

Mr. Beach—He does not say that it had been sent.

Mr. Tracy—Well, he says Mr. Tilton had received a communication from Dr. Storrs.

Judge Neilson—He understood he received it?

Mr. Tracy—Yes, Sir.

Q. By whom did you understand that? A. I don't recollect whether I understood the party or not at that time, Sir.

Q. Did you understand that that message was sent through Carpenter? A. I did not understand that it was a message sent through anybody, but I understood that somebody had sent a communication to Mr. Tilton.

Q. Did you understand that it was a communication sent by Mr. Carpenter?

Mr. Beach—You don't let the witness answer questions; you interrupt him.

The Witness—Now, Mr. Tracy, I understood that Dr. Storrs had said it to somebody who had communicated it to Mr. Tilton, that in that speech Dr. Storrs would deem it necessary to be severe upon Mr. Tilton. Now, whether it was a message or not intended to be conveyed to Mr. Tilton, I don't know.

Q. We don't ask that. A. Well, all right then.

Q. What did you say to Mr. Beecher about who had communicated that story? A. I don't recollect, Sir, who.

Q. Didn't you mention the name of Carpenter? A. I don't recollect that I did, Sir, now.

Q. Did you hear the name of Carpenter mentioned in connection with that communication? A. I don't recollect.

Mr. Beach—Well, that is inadmissible, Sir.

Mr. Tracy—I desire to call your attention, now, to an interview to which you have referred as occurring between yourself and Mr. Beecher prior to or on January 10, 1871, where the Bowen letter was the subject of conversation—Tilton's letter to Bowen of the date of January first; have you omitted from that interview anything except what you have omitted at the request of the Court, as referring to a third party? A. I think I have omitted that Tilton was present in my direct-examination.

Q. Well, you stated that. A. I did not state it in my direct examination. In reading over my direct examination I made a note; I think I am correct about it, Sir; it was some time ago I was glancing over my direct examination, and I think that was left out.

Q. The question I asked you is, whether you have omitted from that conversation anything except what you have omitted at the request of the Court, concerning a third party. A. I don't think I have, Sir.

Q. With that exception you have stated the whole of that interview. A. I think I have; yes, Sir.

#### ANOTHER DISCUSSION ON THE CLARK LETTER.

Q. I hand you this letter, Mr. Moulton, a letter from Mr. Clark; I understood you to say that you had several letters from Mr. Clark, which you showed to Mr. Beecher. A. No; I did not say that I had several which I showed; I don't understand that I said that. I said that I did not recollect distinctly that I had shown this letter to Mr. Beecher.

Q. What did you say on the subject of having shown Mr. Clark's letter to Mr. Beecher? A. I said I was under the im-

pression that I had shown a letter or letters of Mr. Clark to Mr. Beecher.

Q. Then you have other letters of Clark besides that? A. I was under the impression that I had other letters; I have made a search for them and cannot find them, if I had any; that seems to be the only one.

Q. Isn't that the letter you showed to Mr. Beecher? A. I don't think it is, Sir; I don't think it is; I am not clear about it.

Q. You think, now, you never showed any of Mr. Clark's letters to Mr. Beecher? A. My impression is that I did, but I don't recollect distinctly enough about this letter to state it. I told the counsel when I showed this letter originally to them that I was under the impression that I had showed it to Mr. Beecher, but I didn't know it distinctly enough—didn't recollect it distinctly enough when it was submitted to me in Court to say so.

Q. If you showed any letter of Mr. Clark's to Mr. Beecher, that is the one, isn't it? A. I can't say whether it is or not.

Q. I understand you to say that is the only one you find from Mr. Clark? A. It is the only one I find from Mr. Clark; I don't mean to say that it is the only one I had from Mr. Clark.

Q. Do you mean to say that you had any more letters from Mr. Clark? A. Yes, Sir; I had more letters from Mr. Clark; I had before and after.

Q. Where are they? A. I don't know, Sir; I suppose they must have been destroyed.

Q. When and where did you destroy them? A. Well, I suppose at the time, or shortly after.

Q. Do you remember anything about it? A. I do not.

Q. Do you remember of ever receiving a letter from Mr. Clark and destroying it? A. Yes, Sir; I should suppose I had received and destroyed letters from Mr. Clark.

Q. Do you recollect distinctly having torn up or destroyed them? A. No; I don't recollect having torn up and destroyed them.

Q. Isn't that the only letter that you remember having received from Mr. Clark? A. No; it is not the only one I remember having received from Mr. Clark.

Q. Do you remember of having shown any other letter than that to Mr. Beecher?

Mr. Beach—Well that is assuming that he showed that.

Mr. Tracy—No.

The Witness—I have either stated the contents of other letters to Mr. Beecher, and may have stated the contents of this letter to Mr. Beecher; I am only undertaking to give you the truth, Mr. Tracy, as I can recollect it; if you want any more, I cannot give it to you.

Mr. Tracy—Now we offer to read that letter.

Mr. Tracy—Mr. Clark, what capacity did he hold in *The Golden Age*? What was his position on *The Golden Age*? A. He was an editor.

Mr. Shearman—He was Mr. Tilton's assistant editor.

Q. Mr. Clark was assistant editor on *The Golden Age*, wasn't he? A. Yes, Sir; he was employed by Mr. Tilton, I suppose, as assistant editor.

Mr. Shearman—[Reading:]

"Golden Age Office, Jan. 4."—

Mr. Beach—Well, wait. The letter is not identified—it is not admissible.

[Letter handed to plaintiff's counsel.]

Mr. Fullerton—I don't care to read this long letter through. We object to it.

Mr. Evarts—This is the letter that my learned friend produced and presented to the witness on the direct examination and he said that he had shown it to Mr. Beecher. My learned friend then commenced to read it in evidence, when the witness recalled it to his hands, looked it over, and said that he could not be sure, or he could not remember that he had shown this letter to Mr. Beecher; that he had several letters from Mr. Clark, which he showed to Mr. Beecher, and that he talked with Mr. Beecher about them. He could not be sure that he had shown this letter. We have now cross-examined him on the subject of there being any other letters, or of his memory of having shown any other letters, and probed his memory in regard to this letter, and we consider the state of the evidence from him such as entitles us to read this as having been shown to Mr. Beecher, which was the ground on which they were expecting to read it. But the witness recalled the statement and the letter into his hands.

Judge Neilson—The question is now whether it is identified as the letter that was shown.

Mr. Fullerton—I adopt the gentleman's argument as the best one that could possibly be made upon our side of the case, in objection to this document; but I do not adopt his conclusion. The witness did recall the letter, and he recalled what he said in regard to having shown it to Mr. Beecher. That took away my right to read it in evidence, and consequently I did not read it in evidence. They immediately raised an objection on the other side, which objection was well founded, and was acquiesced in by myself. Now they have not added anything to that testimony at all.

Judge Neilson—That is the question.

Mr. Fullerton—Not a jot or tittle. They have simply proved by the witness that he has received other letters from Mr. Clark, and that he thinks that he stated the contents of one or more to him, or read one or more of them to Mr. Beecher; but he cannot identify this letter as one of them which he read to Mr. Beecher, or the contents of which he stated to him. It leaves it exactly where it was before; therefore the letter is not admissible.

Mr. Evarts—It is a question of fact for the jury whether this was shown to Mr. Beecher.

Judge Neilson—I think the question is for the Court whether that is identified as the letter. If you do not identify it now, perhaps you can in the progress of the case.

Mr. Evarts—I, of course, submit to your Honor's correction about the matter as finally disposing of it. But we certainly have changed the situation from what it was before. The witness had distinctly stated—and so it will appear if we recur to his evidence—that he did show some letter of Mr. Clark to Mr. Beecher, but he could not say that he showed this one; but that others he did show, and did have, and did talk about, etc. He said that he talked with Mr. Beecher about this letter, as I



understand him. We said, "Why, you are showing a letter from Mr. Clark to Mr. Moulton; it is not a letter which affects Mr. Beecher until you show that it formed the subject of conversation." Then the letter is shown to us, and we now prove by the witness that this is the only letter that he has.

Judge Neilson—That he has?

Mr. Evarts—That he has; that he has no recollection of having destroyed any letter—

Judge Neilson—The simple question is whether he identifies this letter as the one he spoke of to Mr. Beecher.

Mr. Evarts—Exactly. He has no recollection of having destroyed any other letter. I so understand him. He has just given his evidence; of course, I have no object in misstating it. He has no recollection of having destroyed any other letter, but he may have destroyed them. This letter, it seems, he has, and has preserved, and the contents of the letter will show that it was a matter concerning which conversation was had with Mr. Beecher—that is, the affairs of *The Golden Age*. It has been abundantly proved, and we submit to your Honor that it is sufficiently identified to be permitted to be read in evidence as a part of the dealing between this witness and Mr. Beecher, concerning the affairs of *The Golden Age*, as communicated in letters of Mr. Clark. It is the only letter that is produced; it is the only letter, in respect to the absolute existence of which there is clear evidence; and there is clear evidence that Clark's letters formed the subject of conversation to Mr. Beecher; and, on the witness's direct examination, he said that he showed him some. We say that, as it now stands, however, putting this as presumptive and on the evidence, the only letter concerning whose existence there is clear proof—and the witness's testimony is distinct that some letter of Mr. Clark's, on this subject, he did show to Mr. Beecher.

Mr. Fullerton—The absurdity of this proposition will be seen at once if you put the gentleman's proposition in the shape of a syllogism. Mr. Clark did write several letters to Mr. Moulton; Mr. Moulton has found only one of those letters, the rest he has destroyed, and therefore the one he has found must be the letter which he showed Mr. Beecher. Now, that is a fair statement of the case. There is not the slightest evidence in the world that this is the letter which he showed to Mr. Beecher. There is not evidence enough from which it can be inferred at all. We regard the letter as quite immaterial in any aspect of the case, for any side of the case; but certainly it has not been identified as the letter which was shown to Mr. Beecher, or the contents of which were stated to Mr. Beecher, to make it evidence in the case.

Judge Neilson—That is a point of doubt with me. I think you will have to identify it further. I think you will have to hold it until you can identify it further, gentlemen. It may have been the letter—probably was—but it does not appear that it was.

Mr. Tracy—Have you searched for any other letters of Mr. Clark? A. Yes, Sir; I have myself, and have asked my wife to. Perhaps she may find some to-day.

Q. This is the only one you find? A. Yes, Sir.

Mr. Evarts—This is the witness's direct examination. [Reading]:

Q. [Handing paper to witness]. Tell me whether the paper now shown you was received by you? A. Yes, Sir; it was.

Q. About the time of its date? A. Yes, Sir.

Q. Did you show it to Mr. Beecher? A. I did; yes, Sir.

Q. Did you read it to him, or did he read it, which? A. I don't know whether he read it or whether I read it to him. It was either read to him, or he read it himself.

Q. When did you read it to him, how soon after its receipt? A. I don't remember, Sir, how soon after the receipt; some time after.

Q. Within what time? A. I should think within a month. I remember the conversation—something of the conversation on that subject.

Q. I want you to tell the conversation you had with Mr. Beecher with reference to that letter? A. It was with regard to the difficulties of *The Golden Age*. [To Mr. Fullerton.] Will you let me look at that letter again.

Mr. Fullerton—Certainly.

The Witness—[After examining the letter.] I am not sufficiently clear about that to swear in regard to it.

Mr. Evarts—What is it?

The Witness—I am not sufficiently clear that this is the letter that I showed to Mr. Beecher. I have several letters from Mr. Clark.

Q. You are not clear this was shown to Mr. Beecher? A. No, Sir; I am clear with regard to that. I want to correct my statement in regard to that. That the letter was a subject of conversation I am sure, but that I showed it to him I am not sure.

Now, it seems he has no other letter now, that he has no recollection of having destroyed any other as a specific act or fact, and it stands very distinctly on his original examination that that letter he did show, and that he talked with him about that letter. Now, if we have exhausted all present existence, all definite evidence that any other letters ever did exist, can we not rely upon their direct evidence and our cross-examination to submit the question that that is the letter concerning which he had conversed with Mr. Beecher. He says he had conversations about that letter. He cannot say that he showed it to him—as it ultimately ends; but the doubt, the whole doubt that withdrew the fact, once testified to, that he had shown it to him, that he either read it, or that it was read to him, &c., that disturbance arose because there were supposed to be other letters which he still had, and the matter was reserved then. Now, there are no other letters, none can be found; and we submit to your Honor that we have sufficiently identified that letter as being shown to Mr. Beecher, if any letter was shown to him, and there is no disturbance of the fact that some letter was shown to him, either read to him or read by him, and the fact that this letter was talked about to Mr. Beecher by Mr. Moulton. We now offer to read it.

Mr. Beach—This question, Sir, when it was presented to your Honor on the original offer of this paper, was decided, deliberately, and after argument by counsel. Your Honor then held that the paper was not sufficiently identified to authorize the defendant's counsel to have it marked for identification. Your Honor said to counsel that the paper was not so identified that it was not within the control of the plaintiff's counsel, who held it, and permitted them, under an exception taken by Mr. Evarts, to withdraw it from marking for identification. Has the evidence now given, Sir, changed the attitude of the question? This witness says he knows that he

had other letters from Mr. Clark; that he supposed he had them in his possession; that he has made diligent search for them, and cannot find them, and that he supposes they were destroyed, although he has no distinct present recollection as to the particular act of destruction; but that he had other letters, and that they are lost, is beyond all controversy upon this evidence. He says, Sir, that he cannot recollect whether this letter, or another of the letters which has been destroyed, was shown to Mr. Beecher, or formed the subject of conversation between them. The general topic of the letter in regard to the difficulties connected with *The Golden Age*, was matter of discourse between this witness and Mr. Beecher, and that, of course, is competent; but how the declarations of Mr. Clark, in a written form to Mr. Moulton, not communicated to either of these parties, can be made evidence by the counsel upon the other side, without a clear identification of the paper, as having been thus submitted, I am unable to perceive; and I submit to your Honor that this question having once been decided, and the counsel taking an exception, that there has been no new evidence given which should re-open the investigation.

Mr. Evarts—I only wish to read a part of the evidence. My learned friend is not right in saying that this witness is uncertain whether this letter or the other was the subject of conversation. He is perfectly clear on that point:

Q. You are not clear this was shown to Mr. Beecher? A. No, Sir, not clear in regard to that. I want to correct my statement in regard to that. That the letter was a subject of conversation I am sure, but that I showed it to him I am not sure.

Mr. Beach [reading]:

I want you to tell the conversation you had with Mr. Beecher with reference to that letter? A. It was with regard to the difficulties of *The Golden Age*.

Not with reference especially to that letter.

Mr. Evarts—The letter is full of it; that is all there is of it.

Mr. Beach—I don't know about that.

Judge Neilson—I think you will have to identify the letter further. You can do that, doubtless, in the progress of the case.

Mr. Evarts—I don't know how that is. I have got through with this witness on this letter. I don't know any other mode. I have got through with this witness on this letter, Sir.

Judge Neilson—I think it is not sufficiently identified yet.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Mr. Evarts—We think that we are entitled to read it, whether it was shown to him or not, on the clear statement that the subject of it—

Mr. Beach—I make, if your Honor please, a suggestion to the discretion of the Court, whether, when we make objection to evidence, we shall not have the ordinary privilege of counsel of closing the discussion upon the point, especially after the decision of the Court has been rendered.

Mr. Tracy—Now, Mr. Moulton, was that letter shown to Mr. Tilton? A. I don't recollect whether it was or not.

Q. Was it ever the subject of conversation between you and Tilton? A. I don't recollect whether the letter was or not. The purpose of Mr. Clark to purchase *The Golden Age* was, Sir.

Mr. Evarts—We submit that the whole subject of this letter is exactly what this witness, in his direct examination, was asked about—the conversation concerning it—and stated it to be, to wit, he talked to Mr. Beecher about the difficulties of *The Golden Age*.

Judge Neilson—There may be another letter on the same subject for aught we know.

Mr. Evarts—But are we to take the presumption that there might have been another letter?

Judge Neilson—He has sworn that there were other letters.

Mr. Evarts—I don't understand, if your Honor please, —

Mr. Morris—Is this an appeal from your Honor's decision that they are arguing?

Mr. Evarts—I don't understand that there were other letters.

Judge Neilson—He says he had other letters.

Mr. Evarts—Your Honor, that is exactly the point; that as it stands on his present examination, there is not any clear memory or statement of his that there ever were any other letters.

Judge Neilson—I understand him to say there were other letters.

Mr. Evarts—He has said so at some time in his examination, but we do not so submit the fact to be. Of course we would be very willing, as a matter of evidence, to present such other evidence as there might be, but your Honor sees that this witness, to whom the letter was written, and who was the agent that communicated it, seems to be the only witness to that fact that there is.

Mr. Fullerton—That is no reason why it should be admitted.

Mr. Evarts—No; but his Honor thinks it should be further identified. It is not, therefore, a question of whether we should reserve it, but whether your Honor excludes the letter finally.

Judge Neilson—I exclude it simply because it does not seem to be sufficiently identified as the one that was the subject of conversation.

Mr. Evarts—Well, your Honor, we suppose that there is no doubt on his own testimony of that. He says he is sure of it.

Judge Neilson—Proceed, Mr. Tracy.

Mr. Tracy—Mr. Moulton, what passed between you and Mr. Beecher concerning the difficulties of *The Golden Age* at that conversation where a letter from Clark was talked of? A. I talked with Mr. Beecher, Sir, about Mr. Clark's purchasing *The Golden Age*—about his desire to do it.

Q. Did you repeat to Mr. Beecher what Mr. Clark said about it? A. I think I did, Sir, substantially what Mr. Clark said.

Q. Did you repeat to him substantially what Mr. Clark had said to you in a letter? A. I had no other means but that; what he said to me in a letter and verbally. I met Mr. Clark, I think, about the time at *The Golden Age* office as well. Verbally and by letters.

Q. Did you say to Mr. Beecher that Mr. Clark had told you that he thought at one time that he would get some one who would purchase *The Golden Age* of Mr. Tilton? A. I told Mr. Beecher that Mr. Clark was trying to purchase *The Golden Age*—talked of it.

Q. Did you tell him that Mr. Clark had told you that at one time he thought he could get some other person to purchase



*The Golden Age*, but had tried and failed? A. To get some other person than himself, Sir?

Q. Yes, Sir. A. I don't recollect whether I did or not. I talked with him in a general way about it. I can't remember that precisely, Sir.

Q. Did you tell Mr. Beecher that Mr. Clark's trial to find some one who would purchase *The Golden Age* had failed? A. I don't recollect that I did, Sir.

Q. That Mr. Clark said so? A. I don't recollect that either.

Q. Did you tell Mr. Beecher that Mr. Clark said that the men he had spoken to had such painful impressions, if not seated prejudice, against Mr. Tilton, that they were unwilling to even seriously consider the matter? A. I don't think I told him that, Sir.

Q. You don't think you did tell him that? A. No, Sir.

Q. Did you tell him that Mr. Clark told you that he, Clark, had been blamed for retaining a connection with such a man and paper? A. I don't recollect that, Sir; no, Sir.

Q. Do you recollect that you did not so tell him? A. If I had any recollection about it, Sir, I would tell you.

Q. Did you tell him that Mr. Clark told you that two or three men who had no prejudice against Mr. Tilton saw no field and no future for the paper and advised its giving up? A. No, I don't recollect having told him that.

Q. Did you tell him anything of that kind? A. I don't remember.

Q. Did you tell him anything of that kind, in substance? A. I don't remember that.

Q. And especially, did Mr. Clark add, the name of the editor was a millstone upon it? A. No, I don't remember that.

Q. Did you tell him anything of that kind? A. I don't recollect that I did, Sir.

Q. Did you tell Mr. Beecher that Mr. Clark had said that the name of the editor, Mr. Tilton, was a millstone upon the paper? A. I don't recollect that I did, Sir.

Q. Do you remember that you did not? A. I have no recollection about it, Sir. If I recollected that I did I should tell you. My impression is that I did not tell him.

Q. Did you tell him that Mr. Clark said the newspaper men with whom he had conversed had advised the starting of a new paper and allowing *The Golden Age* to sink? A. I don't remember that I did, Sir.

Q. Do you remember that you did not? A. I don't remember that I did not, or that I did, Sir.

Q. Did you tell him that Mr. Clark had informed you that he (Clark) had found on inquiry a much deeper and stronger prejudice against Mr. Tilton than he had imagined, and that he (Clark) had been a good deal depressed by it—by that information? A. My impression is that I did not tell him anything of the kind, Sir.

Q. Nothing in substance that? A. No.

Q. Did you tell him that Mr. Clark had informed you that he wrote this explanation to you because he could not tell it to Mr. Tilton without wounding his already lacerated heart. A. No.

Q. Did you tell Mr. Beecher that Mr. Clark had informed you that he thought Mr. Tilton ought to go abroad into another

atmosphere and new scenes? Did you tell Mr. Beecher that? A. I don't recollect that I did, Sir.

Q. Anything of the kind; did you tell him that Mr. Clark had made any suggestion to you about Mr. Tilton going abroad? A. I don't remember that I did, Sir; I don't think I did.

Q. Do you remember that you did not? A. I say I don't think I did, Sir.

Q. Now, can you state what it was in the letter of Mr. Clark—any letter of Mr. Clark—that you did talk to Mr. Beecher about? A. I think it was a letter of Mr. Clark's in which he talked about the purchasing of *The Golden Age*, and I communicated or showed to Mr. Beecher that letter—communicated the substance of it, namely, that Mr. Clark was going to try to buy *The Golden Age*.

Q. Now, look at that letter and say if that is not the letter? [Handing witness a letter.] A. I don't think it is, Sir; I don't think it is.

Q. Will you swear that it is not the letter? A. I will swear that my impression is that it is not the letter. My impression is that the letter was a shorter one, which simply communicated to me Mr. Clark's intention of purchasing; I think it was, Sir. I have tried to find all the letters that I had, and probably may find it yet; if I do I will present it to you.

Mr. Tracy—That is all.

Judge Neilson—Are you through?

Mr. Tracy—There are some envelopes.

Mr. Morris—Will you please hand those letters back that you have not used, all of them?

Mr. Tracy—You have produced certain letters from Mr. Beecher this morning which, we understand, are all that you have in your possession. Have you destroyed any of Mr. Beecher's letters to you? A. I should think I had, Sir.

Q. You think you have? A. Yes, Sir.

Q. Intentionally? A. Intentionally? I could not have done it unintentionally.

Q. Did you do it intentionally? A. Why, of course I did.

Q. Now, when? A. I suppose when I received them, or about the time.

Q. Do you know when? A. I know I have not since your subpoena, Sir.

Q. When before the subpoena did you destroy them? A. I cannot tell precisely when, Sir.

Q. Can you tell anything about it? A. No; not precisely; no.

Mr. Evarts—There was an envelope that was identified and not put in evidence. We will read that.

Mr. Tracy—It is postmarked—"Brooklyn, May 6, 5 p. m., New-York. Mrs. Elizabeth Tilton, Care of Theodore Tilton, Esq., Brooklyn, New-York."

[Marked "Exhibit D 48."]

Q. The handwriting of that envelope—is that Mr. Tilton's handwriting? [Handing witness the envelope.] A. Yes, Sir.

Mr. Fullerton—Well, you mean the whole of it is in his handwriting?

The Witness—No, not the whole. The superscription. The memorandum is not.

Mr. Fullerton—There is no distinction between the superscription and the memorandum, in your answer.

The Witness—I beg pardon.

Judge Neilson—The answer applied to the direction of the letter.

Mr. Fullerton—And therefore was an error.

Mr. Evarts—Give us the letter that was in that envelope.

[Handing envelope to plaintiff's counsel.]

Mr. Morris—I don't know what letter you refer to.

Mr. Evarts—If your Honor please, I ask the counsel to produce the letter that was in that envelope.

Mr. Morris—I say I don't know what letter was in it.

Mr. Shearman—We ask you to produce a letter from Mrs. Tilton to Mr. Moulton, written Feb. 10 or 11, 1872.

Mr. Evarts—It is postmarked Lafayette.

Mr. Shearman—Lafayette, Indiana.

Mr. Evarts—Lafayette, Indiana, February 12, and we assume it was 1872. Now, if you will find the letter.

Mr. Morris—A letter from whom?

Mr. Shearman—A letter from Mrs. Tilton to Mr. Moulton. The letter is marked "II" in the original statement.

Mr. Evarts—The Clark letter we ask the stenographer to mark for identification, as being that concerning which your Honor has ruled.

[Letter marked "Exhibit D 49 for identification."]

Mr. Evarts—We wish this paper identified as the letter in that envelope.

Mr. Tracy—Is that the letter that came under that envelope? [Handing witness a letter.] A. I think it is; yes, Sir.

Mr. Evarts—We ask to have them marked for identification. We do not offer them now.

[The letter is marked "Exhibit D 50 for identification."] The envelope is marked "Exhibit D 51 for identification."]

Q. We have called on you for all envelopes in which letters were received by you and you have produced three, two of which have been marked for identification. Have you any other?

Mr. Morris—Oh! we have produced a number more.

Mr. Tracy—Envelopes? Where are they?

Mr. Morris—Over there, with the letters in them.

Mr. Evarts—You mean those that you gave us this morning?

Mr. Morris—Yes, Sir.

Judge Neilson—He can answer whether he has any more than those produced, without stopping to number them.

Mr. Fullerton—Yes. But he cannot answer that question put.

Mr. Tracy—Wait a moment; the question was put under a misapprehension. [To the witness]—Have you any other envelopes that belong to any papers that have been put in evidence on either side? A. None that I know of; no.

Q. What has become of them? A. I suppose they have been destroyed; I haven't got any.

Q. Do you remember destroying them? A. I don't remember precisely when I destroyed them. They must be destroyed. I haven't got them.

Q. Do you remember destroying them? A. I do not remember having destroyed them; I know I haven't got them; that is all.

Q. Do you remember whether in Exhibits 49 and 50 marked

for identification—whether in that envelope there was also a letter inclosed for Mrs. Tilton? A. I don't really remember, Sir, whether there was or not; I rather think there was not though.

Q. You don't remember? A. My impression is that there was not.

Mr. Fullerton—I think there ought to be some way of quickening the other side in their movements.

Mr. Evarts—What would you suggest?

Mr. Fullerton—I would suggest that you go on.

Mr. Evarts—That is exactly what we are suggesting now.

Mr. Fullerton—It takes you too long to make the suggestion.

Mr. Evarts—How would you remedy that?

Mr. Fullerton—By going on.

Mr. Evarts—That is, provided you were on our side in the case.

Mr. Fullerton—No; if I was on your side I would not go on. [Laughter.]

#### THE SUGGESTIONS OF IMPEACHMENT AGAIN.

Q. You say you have identified the gentleman, Mr. Swan, with whom you were supposed to have a conversation? A. I will tell you what I did do; I sent over a young man this morning to find out whether Mr. Armour's partner's name was Swan, and I believe that to be the man.

Q. Did you say to him on any occasion since the publication of Mr. Beecher's statement, that you and Mr. Beecher were in controversy, and that you had got to destroy him, or he would destroy you? A. I don't recollect that.

Q. Did you say anything in substance like that? A. I don't recollect that I did; I have not any recollection of saying any such thing as that.

Q. You remember talking with him about it? A. I don't remember having talked with him about it.

Q. This conversation was in the City of New-York? A. I don't remember any conversation on the subject. I know Mr. Swan. Judge Neilson—It may be another Swan.

Mr. Evarts—Swans are not so plenty.

Mr. Tracy—Did you say anything to him on the subject of destroying Mr. Beecher? A. I don't recollect that I did.

Mr. Tracy—That is all; we are through.

#### THE RE-DIRECT EXAMINATION.

Mr. Fullerton—You were asked a moment since in regard to the envelopes which contained Mr. Beecher's letters. How many of them have you produced? A. I produced all I had.

Q. About how many in number? A. The record seems to show you have produced but two or three, in consequence of the form or structures of the questions put to you by the other side? A. I don't remember how many I produced; I produced all I had.

Q. About how many are there? I only want it to go on the records that there are more than three? A. There are more than three.

Q. Do you recollect destroying any of the envelopes? A. Tearing them?



Q. Yes, Sir; or burning them? A. I don't recollect precisely about it. I must have done so.

Q. Do you think you must have done so because you have not got an envelope to match each letter that is produced? A. Yes, Sir; precisely.

Q. You reason it out? A. Yes, Sir.

Q. But you have no positive recollection of destroying any one of them? A. I didn't undertake to keep the envelopes.

Q. In regard to the letters of Mr. Beecher, have you any distinct recollection of destroying any of his letters? A. I remember tearing up some of his letters after reading them, when they didn't interest me very much.

Q. Did they relate to this controversy that is going on in any way? A. No, Sir; I don't think they did.

Q. Did you preserve every letter that related to the controversy? A. Every letter of importance, I think I did; any letter I considered of any importance I preserved.

Q. You have been asked with regard to your conversation on July 5th in respect to the proposed statement made at that time, commencing, "This church and community are unquestionably interested," &c. What did you say to Mr. Beecher at the time that publication was proposed, or was the subject of conversation?

Mr. Evarts—We object to the renewal of the inquiry. The conversation was affirmatively gone into by our learned friends as a part of their direct-examination, and all that we have asked him was what occurred this morning, which was whether he didn't say so and so. That does not give them a right to re-examine him as to the conversation. It is their examination and their conversation, and our cross-examination.

Judge Neilson—Unless there is something that requires explanation, that is all.

Mr. Evarts—He might re-examine him in regard to what he said to us in that conversation, but he has commenced by asking him what that conversation was, which has already been produced as affirmative evidence on their part.

Mr. Fullerton—It is not to be expected, if the Court please, that any witness after the lapse of such a length of time, would be able to state the whole of the conversation which took place between himself and another person. The witness's attention was called to this statement, which is "Exhibit No. 34," and to what he said to Mr. Beecher at the time, and he went on to give that part of the conversation, which was then within his recollection. He has undergone a severe cross-examination in respect to that conversation, and he has been asked if he did not say such and such things, which were incorporated in the question, bringing up to his mind something that he had not theretofore stated,\* and he stated once or twice during that cross-examination that he was willing to state what he said to Mr. Beecher on that subject—that is to say, the subject incorporated in the question. Now, if there was anything said on that subject which the witness didn't recollect when he was on his direct examination, it is proper for me now to call it out.

Judge Neilson—Especially as he was not allowed to state it when he was cross-examined.

Mr. Fullerton—Yes, Sir; that is the reason why I put the

question. Of course, we cannot shut our eyes to the conclusion that these questions were put to him with a view of contradicting him by some other witness, and it is right and proper that he should state what he did say to Mr. Beecher on that subject, at that time, if he did not say the exact things which were incorporated in the question put to him.

Mr. Evarts—My learned friend is altogether out there. We are not going to contradict him. We wanted to prove that he said it and he said he did.

Judge Neilson—I think he may answer the question.

Mr. Evarts—One moment, if your Honor please. This is re-direct examination. It is a very grave matter, if we are to understand that the reproduction of one of these interviews is authorized, or some part of it.

Judge Neilson—My recollection is that the witness, when interrogated on the cross-examination, in answering, said he could state what was said, but was not allowed to, as he had then no right to do, except upon the consent of counsel examining him.

Mr. Evarts—I agree that what pertains to that very point of the conversation that we brought out, may be; I don't argue against that; I only argue against the generality of the conversation—that the whole conversation may be gone into.

Judge Neilson—You are at liberty to read what he said in the re-direct, and then the inquiry might be shortened.

Mr. Tracy—This is a conversation that occurred between the witness and Mr. Beecher one Sunday, on the 5th of July, when they had a walk on Sunday, when the witness introduced Mr. Robinson as one of the parties to the conversation. That will identify the conversation as I understand it. That was the conversation of last July, 1874. He was examined fully on that matter, and on cross-examination we asked him, didn't you in that conversation tell Mr. Beecher thus and so.

Mr. Fullerton—And in reply he said, "I didn't tell him that, but I will tell you what he said if you will let me."

Mr. Tracy—The counsel is mistaken. The witness said, "I did say so." That is the answer of the witness—"I did say so."

Mr. Fullerton—That is not the way the evidence stands in that regard.

Mr. Evarts—We call attention to the direct examination. [Reading]:

Was any other course proposed? A. Yes, Sir; I submitted to him a paper which I had dictated to Frank Carpenter, and I said; "Mr. Beecher, if anything is said I deem it most judicious that this should be said," and I read to him that which I had dictated to Mr. Carpenter.

That is the paper concerning which the examination and cross-examination proceeded. [Again reading]:

Q. In whose handwriting was that paper? A. That paper was in Carpenter's handwriting. Mr. Beecher asked me for a copy of it.

Q. Did you give him a copy of it? A. I did give him a copy of it.

Q. In whose handwriting was the copy? A. It was in my handwriting.

Q. Look at the paper now shown to you, and say whether it is the original of that paper. A. Yes, Sir; that is the original.

Q. What occurred between you and Mr. Beecher with reference to this proposed card after the interview of which you

have just spoken? A. Well, I have not finished that interview.

Q. Well, please finish it? A. I said Mr. Beecher asked me for a copy of it. I gave him a copy of it, with an alteration or two in it, and he said that he would make a copy of it in his own handwriting—make a copy of that copy in his own handwriting, and submit it to some of his friends.

Q. Did he afterwards state whether he had submitted it to his friends? A. I don't remember whether he did or not, Sir.

Q. What occurred with reference to that card at any time after that?

That was the subject of the examination.

The Witness—That was not July 5th.

Q. What occurred with reference to that card at any time after that?

Then Mr. Beecher's answer, and then the witness, and then Mr. Beecher, and then Mr. Fullerton said: "I now offer the paper in evidence." Then the witness said: "I had a subsequent conversation with Mr. Beecher about it and I told him that I had seen General Tracy concerning a reply to the Bacon letter." All that was gone into. I don't see that it is proper. All we have said will appear by the evidence to-day.

Mr. Beach—Then he was asked, "when that card was presented or shown to Mr. Beecher, did you not say thus and thus?" Suppose the witness answers that he did say that, on re-examination are we not permitted, his memory having been refreshed by that specific question, he having added to the conversation—may we not ask him, "What else did you say in that connection?"

Judge Neilson—Yes, Sir.

Mr. Evarts—In that connection.

Mr. Beach—Yes, Sir.

Mr. Evarts—We have not objected to that.

Mr. Beach—If he says, he did not answer thus and thus, as inquired of, "but I will tell you what I did say;" are we not permitted to ask him what it was?

Judge Neilson—You are.

Mr. Beach—That is the course we are pursuing.

Judge Neilson—The apprehension of the counsel was, that the question called upon the witness to repeat the entire conversation, including what was given on the direct.

Mr. Fullerton—Your attention was called, on the cross-examination, to the conversation which you had with Mr. Beecher on July 5, in regard to a proposed statement, and you were asked whether you did not say in that conversation certain things to Mr. Beecher. I understood you to say you did not, but that you did say something that you would tell if you were permitted; you were not permitted. I now ask you to state what you did say on that occasion.

Mr. Evarts—That we object to.

Mr. Fullerton—It would have been well to have raised the objection after the question was completed.

Judge Neilson—I think I must allow that.

Mr. Evarts—I beg your honor's pardon. The point is, that the witness has not so answered; he has said that he did say what we asked him, and not that he didn't.

Mr. Fullerton—The decision of the Court is usually the end of argument, but it seems to be the commencement of it in this

case. I don't know when my friends will be satisfied with the presentation of their objection to this inquiry.

Mr. Evarts—This is the first time the question has been asked, and the first time I objected to it; and I have given as a reason that it assumes a statement exactly the opposite of the fact.

Mr. Fullerton—The same question was put in substance ten minutes ago, and the intervening time was exhausted in your argument, after the Court had decided the question admissible half a dozen times.

Mr. Evarts—I am always ready to take a reprimand from you, of course.

Mr. Fullerton—But it don't seem to do you any good.

Judge Neilson—I think counsel, instead of repeating the testimony, ought to put his question specifically as to anything that was omitted.

Mr. Fullerton—I have directed the attention of the witness specifically to the question put, and to his answer, and asked him to state what else was said on that subject at that time.

Judge Neilson—He can answer that.

Mr. Evarts—My objection is that you don't state the answer properly, and I object to it.

Mr. Fullerton—The gentleman's objection has been stated half a dozen times.

Judge Neilson—I intimate now, that you can ask him, "What else was said; whether you are correct in your recollection or not?"

Mr. Evarts—The objection to the question is just as good.

Mr. Fullerton—But not better.

Mr. Evarts—If your Honor requires him to modify the question, very well; if not, I wish to object to it, and to have my objection noted.

Mr. Fullerton—The objection is made; we have got the decision and the exception is noted. Is there anything else?

Mr. Evarts—I do not understand that the Court to have so decided.

Judge Neilson—[To Mr. Fullerton.] Does your question call for a repetition of the original evidence?

Mr. Fullerton—No, Sir.

Judge Neilson—Then proceed.

The Witness—Will the stenographer repeat the question?

[THE TRIBUNE stenographer here read the question.]

Mr. Evarts—Your Honor will note my exception to the allowance of the question as it now reads.

Judge Neilson—[To the witness.] What further did you say?

The Witness—My recollection is that I told Mr. Beecher that Mr. Tilton had committed himself in that interview at Delmonico's to peace if Mr. Beecher kept silent, or made the statements which he did make, and my impression is also that I told him that if that course was followed, I should destroy the documents.

Mr. Beach—It is now one o'clock.

The Witness—I think we had better go now; I want to make some arrangements at one o'clock.

Mr. Beach—What do you prefer?

The Witness—I prefer to go on. I will come back here after I make my arrangements at home. I want to finish it to-day.



Judge Neilson—The jurors will be in their seats at two o'clock. (To the audience)—gentlemen will wait until the jury retire.

Mr. Mallison (the Clerk)—The court will now take a recess until two o'clock.

#### HOW MOULTON BECAME BEECHER'S ENEMY.

After the recess Mr. Moulton's direct examination was continued.

Mr. Fullerton—Do you recollect a letter that was put in evidence on your cross-examination, written by Mrs. Tilton to yourself, commencing "for my husband's sake and my children I hereby testify with all my woman's soul, &c.," A. Yes, Sir.

Q. Having now found the letter, I place it in your hands, and ask you the origin of that letter?

Mr. Tracy—Wait a moment. To that question I trust the witness will not be permitted to give conversations between himself and Mr. Tilton on that subject.

Judge Neilson—Well, it would not be proper to give conversations with Mr. Tilton unless it is one that has been called out on their part.

Mr. Beach—Or unless it was communicated to Mr. Beecher.

Judge Neilson—Yes; and in that case you might begin with Mr. Beecher first.

Mr. Fullerton—What was said in reference to that letter in the presence of Mr. Beecher, or which was communicated to Mr. Beecher.

Mr. Tracy—That we object to, your Honor. We have not gone into any such conversation, and if they had any such conversation with Mr. Beecher, in regard to that letter or any other letter, it is affirmative proof which they should have gone into. We have simply proposed the letter in evidence, and proved that Mr. Tilton presented it to the witness. We have gone into no conversation about it.

Judge Neilson—That raises the subject, and allows him to prove what was said to Mr. Beecher, if anything, about the letter. It could not be asked before, because the letter was not produced. I think it is proper.

Mr. Tracy—Your Honor will note our exception.

The Witness—I sent for Mr. Beecher to come to my house, Sir, one morning in the latter part of December, 1872, and he came, and I told him that Mrs. Tilton had said to Mr. Tilton that she thought there better be a denial of the stories, and that she had written a letter to me which Mr. Tilton had handed to me, and so far as Mr. Tilton was concerned, he was perfectly willing that they should take the responsibility of such denial—Mrs. Tilton should, and that he might if he choose; and I left Mr. Beecher and Mr. Tilton together—or rather before that Mrs. Tilton was sent for and Mrs. Tilton came, and I am under the impression, Sir, that I remarked before I left that interview, that I didn't see much good at that late hour of a denial, and that is what I remember about the letter, Sir.

Q. Was that letter present during that conversation? A. Yes, Sir, that letter was present.

Q. Did you show it to Mr. Beecher during that conversation? A. I showed it to Mr. Beecher; yes, Sir.

Q. The letter is "Exhibit D. 44." Did he make any observations in regard to it? A. I left him alone, Sir, after Mrs. Tilton came with Mr. Tilton; the interview I was not present at after that.

Q. The denials were never published, I believe? A. No, Sir; that is the only one I ever saw.

Q. Now, you have been asked in regard to your hostility to Mr. Beecher. I ask you when that hostility, if it may be so termed, commenced? A. When I found, Sir, through his—through having read a portion of his published statement—that in return for my kindness towards him he had sought to ruin me by false charges against me, as I deemed then, and do now.

Q. Up to that time you had felt friendly towards him? A. I was not in hostility to him, Sir, to that time.

Q. Whatever you may have said in regard to him since that time was in consequence of that publication of his? A. Yes, Sir.

Mr. Evarts—That I object to.

Judge Neilson—We will take it.

The Witness—I have answered it, yes, Sir.

Judge Neilson—They go to the *quo animo* of the witness.

Mr. Evarts—Whether it was in consequence of it we judge by knowing if it is after that. It is right of course to prove facts, and then conclusions are to be drawn by the Court and the jury.

Judge Neilson—I think we will allow the question.

Mr. Evarts—Your Honor will please note my exception.

Q. Was there any other cause of hostility? A. No.

Q. Now, your attention has been called to the letter of Aug. 4th, in reply to one of Mr. Beecher written the latter part of July; what did Mr. Tilton say in regard to that letter when you showed it to him? A. What was that letter, Sir?

Mr. Fullerton—Just hand him the letter of Aug. 4th. You will find it in the first part of Judge Porter's cross-examination. [Book handed to the witness.]

Q. What is it marked? A. Marked "D. 7."

Q. The letter of August 4th, then, marked "D. 7," being shown to you, I ask you what Tilton said in regard to it when it was shown to him?

Mr. Evarts—That we object to. What Tilton said to Moulton is not evidence against us.

Judge Neilson—On what ground is it evidence?

Mr. Fullerton—It is a part of the *res geste*. They prove that the letter was exhibited to Mr. Tilton, and they mean to draw an inference from it.

Mr. Beach—They seek to conclude him by the contents of the letter—his seeing it. Now, what answer did he make?

Mr. Fullerton—They mean to argue that he acquiesced in the sentiments expressed in that letter. Now, they can't foreclose Mr. Tilton in that way.

Mr. Evarts—We can at any time prove what Tilton did, and the plaintiff cannot; that is the principal proposition of evidence. Now, we have proved in regard to this, if I comprehend the subject matter of the present inquiry rightly, to be the letter of Mr. Beecher to Mr. Moulton of the 4th of August, and Mr. Moulton's reply of the 5th. We have proved that this letter of Mr. Beecher's was shown to

Mr. Tilton, and that Mr. Tilton made the answer which was sent. Now, those are acts of Mr. Tilton. That Mr. Tilton said he was doing those acts with Mr. Moulton with whom he was acting is not evidence against us. We got the letter and we prove that it proceeds from Mr. Tilton in the form that he writes it and Mr. Moulton signs it. Now, out of our proof of that action of the plaintiff, all whose acts which are pertinent, we have a right to prove, and none of which they have a right to prove, they seek to bring in the conversation that took place between Mr. Moulton and Mr. Tilton while these acts were being performed. That is, as I understood the evidence, and I know no rule of evidence which permits it.

Mr. Beach—Will the counsel permit me to call his attention to a rule of evidence fundamental, that when an act is given in evidence, any accompanying declarations qualifying or explaining the act are admissible as a part of the *res gestæ*.

Mr. Evarts—I agree to that.

Mr. Beach—Well, if he agrees to that he proves the act of Mr. Tilton upon the presentation of this letter to him. Now, we propose to prove what Mr. Tilton said in connection with the act of reception or the act of drafting the reply to that letter.

Mr. Evarts—The reason we proved the act is the *res gestæ* can be proved as between Tilton and Beecher. Now, the reasoning of my learned friends and the proposition of evidence is sound if, when Tilton delivered that letter to Mr. Beecher, supposing he had delivered it, and so there was an act between them in that form, then what Mr. Tilton said when he delivered it if we omitted it, they could prove, no doubt. But the note is Tilton's writing—a letter for Moulton in answer to Mr. Beecher, which letter is sent to Mr. Beecher. That is the action of Tilton that we proved. Now, they prove the conversation between the writer and the amanuensis, the dictator and the man who furnishes the handwriting at the time that it was going on; that is the present proposition.

Mr. Beach—Counsel will please observe that we ask no question as to a declaration of Mr. Tilton in regard to the letter which he drafted and sent to Mr. Beecher; the question is as to the letter from Mr. Beecher which was presented to him.

Judge Neilson—I understand that. What did he say when he saw the letter? I think he can give that, Sir.

Mr. Evarts—Doesn't it transcend any rule as yet considered whereby everything that passed between this witness and third persons, including Mr. Tilton, in order to affect Mr. Beecher, should have been brought home to him. Now, that has not been done.

Judge Neilson—This is part of the act of receiving the letter. I admit it with that view.

Mr. Fullerton—It was a letter which they put in evidence.

Mr. Evarts—If your Honor please, Mr. Moulton receives a letter from Mr. Beecher, he goes and shows it to Tilton, and the conversation between them is to be given in evidence?

Judge Neilson—As a part of the act; yes, Sir.

Mr. Beach—That is what they prove—showing the letter to Mr. Tilton—for without that they could not introduce it at all, and upon the theories that he approved it when it was brought to his attention.

Mr. Evarts—The theory is of proving that he made the answer which we have given in evidence.

Judge Neilson—We will receive what was said in immediate connection of receiving the letter.

Mr. Evarts—Between Mr. Tilton and Mr. Moulton?

Judge Neilson—Yes, Sir.

Mr. Evarts—Your Honor will be so kind as to note our exception.

The Witness—I said to Mr. Tilton that the statement in the letter that Mr. Beecher had placed in my hands for merely safe-keeping, letters addressed to him from his brother and sister and various other parties, and also memoranda of affairs not immediately connected with Mr. Tilton's matters, were untrue—that that statement was untrue—and I asked him to recall the circumstances, and he said he did recall the circumstances, and he did recall them.

Q. Who recalled that? A. Mr. Tilton said he remembered the letters of Mrs. Hooker, and remembered—

Mr. Evarts—What he said, I suppose, is—

Mr. Fullerton—That is what he has stated.

The Witness—Yes, I will tell you what he said before.

Judge Neilson—Please to understand it is what he said in immediate connection with his seeing the letter.

The Witness—Yes, Sir, precisely so.

Judge Neilson—And nothing beyond that.

The Witness—Precisely.

Judge Neilson—Go on.

The Witness—He said to me "Don't you remember in that connection that Mr. Beecher wanted me to go and see Mrs. Hooker, and that I did go to see Mrs. Hooker, and that I did for the purpose of quieting her as against making the charge of adultery against him, charging her with adultery; and don't you remember upon the same authority, I mean that she proposed to charge Mr. Beecher and Mrs. Tilton with adultery, and I came back and told Mr. Beecher that, and he seemed to be satisfied with it, and was delighted with it: don't you remember that?" he said to me, and he recalled it, and I did remember it.

Mr. Evarts—Said what you said? A. I said yes; I remembered it in substance.

Mr. Evarts—Asserting that you did remember it, is not stating what you said.

The Witness—I stated that as—

Mr. Fullerton—Never mind.

The Witness—Pardon me.

Mr. Fullerton—I call your attention—

The Witness—Wait a moment. Mr. Tilton also said—you know I have not had access to your depository of materials, and that is about all, and then he—

Mr. Evarts—Now, if your Honor please, the evidence having been given, I move to strike it out entirely, as no part of the *res gestæ* whatever, and a mere form of bringing in conversation between these parties concerning some facts in this case.

Judge Neilson—The motion is denied. You take exception.

Mr. Evarts—We except to your Honor's decision.

Mr. Fullerton—I call your attention to the letter of August the 5th, and that to part of it referring to a proposed consent from both Mr. Beecher and Mr. Tilton to use these papers in



your hands, and I ask you whether at that time you procured a consent from either party.

The Witness—Almost immediately, Sir, after the writing of the letter from Mr. Tilton—

Mr. Evarts—One moment.

Mr. Fullerton—I ask if he procured a consent to use these papers from any one.

[Book shown to Mr. Evarts with explanations of counsel.]

Mr. Evarts—As I understand this present question, this letter has nothing to do with it except as a suggestion to the mind of the witness. Whenever he undertakes to prove the occurrence of telling him, why then I will object to it. The point of this inquiry, as I understand it, is to prove action between Mr. Tilton and himself, and all such action I object to, as the general rule of evidence entitles me to object to it. That something must occur to take it up—

Judge Neilson—Some arrangement or suggestion procuring consent.

Mr. Evarts—It was not a suggestion. A communication was made to Mr. Beecher in this letter which Mr. Tilton wrote, referring to that subject. But it was not a transaction in which Mr. Beecher took any part or was invited to take any part. Then, therefore, because a man has said in a letter to Mr. Beecher, that he will not do a thing without doing something else first—on that mere statement, which we had nothing to do with except to receive it, they propose to show that he afterwards did the things that he said he would do. The question is whether the things—whether he said he would do them or did not say he would do them, are matters that affect Mr. Beecher—

Judge Neilson—What is your proposition.

Mr. Fullerton—My proposition is this, Sir: To prove that Mr. Moulton obtained consent from Mr. Tilton to use these papers then in Moulton's hands, having in the first place construed Mr. Beecher's letter into a consent on his part. And I do it for this purpose: They intend upon the other side to draw an inference against Mr. Moulton, for the reason that he refused to give either the originals or copies of those papers to Mr. Beecher upon his application. His reply, as your Honor recollects, was that he was the custodian of them for the benefit of both parties, and that he would not give them to either one without the consent of the other.

Judge Neilson—What is the paper that shows Mr. Beecher's assent?

Mr. Fullerton—The letter of Aug. 4th?

The Witness [Reading]: "I do demand that you forthwith place before the Committee every paper which I have written, or deposited with you." My answer reads: "In reply I can only say that I cannot justly place before the Committee the papers of one of the parties without doing the same with the papers of the other, and I cannot do this honorably except either by legal process compelling me or else by consent in writing, not only of yourself, but of Mr. Tilton, with whom I shall confer on the subject as speedily as possible."

Mr. Fullerton—Now, it is proper for me to show consistency in the conduct of this witness, by showing that he procured

that consent of Mr. Tilton, and then went before the Committee to give the papers.

Judge Neilson—Well, you must show the acts to be separate; they must be separate.

Mr. Evarts—The difficulty is, that the act does not affect us; it is no act of Mr. Beecher's, or that affects him; it is not so proposed. It is proposed as an act of Mr. Tilton's with this witness.

Judge Neilson—The witness proposes to have the consent; and I rule that he may prove the consent that he obtained from both or either of the parties.

[Exception by Defendant.]

Mr. Fullerton—Now what did you do in that regard? A. Immediately procured the consent of Theodore Tilton, Sir.

Q. And then? A. Went to the Committee.

Q. Then you went to the Committee? A. Yes, Sir.

Q. With the papers? A. Yes, Sir; or, rather, I went to the Committee—

Judge Neilson—That was after the communication from Mr. Beecher? A. Yes, Sir.

Mr. Evarts—We object to all this.

Judge Neilson—Well, Mr. Beecher called for the papers; then he procured Mr. Tilton's consent to use the papers.

Mr. Evarts—He didn't give them to Mr. Beecher after that. The only point with us was that Mr. Beecher applied to him and he made this reply which Mr. Tilton sanctioned and wrote; that is the end of that transaction. Now, they seek to show the consistency of the witness. We have nothing to do with that; we are not trying his consistency, nor the fact of what he did with third persons to make it consistency.

Judge Neilson—No; but I simply rule that it is competent for him to state whether or not he got Mr. Tilton's consent to use the papers.

Mr. Evarts—That has been made the subject of an exception, and that disposes of that. Then he goes on to state, after he got the consent, "I then took the papers and went before the Committee."

The Witness—I made a mistake in saying that I then took the papers.

Mr. Evarts—Well, took the papers afterwards and went before the Committee. We have nothing to do with that.

The Witness—Well, I made a mistake, if you have that impression.

Judge Neilson—Well, that last line may be stricken out.

The Witness—I went before the Committee with a statement after he went, and stated to the Committee that, having had the consent, I would—

Mr. Evarts—We object to this.

Mr. Beach—Well, you listen one moment.

Mr. Evarts—No, for this reason, that I have called his Honor's attention to the additional statement; and his Honor said that that should be stricken out. Now, while that is pending, I object to the witness going on with other matters.

Mr. Beach—Well, I am going on, it is not the witness; I am just now stating to your Honor a proposition. The demand from Mr. Beecher was that these papers should be furnished either to him or the Committee. Mr.

Moulton says: "I cannot do that, Mr. Beecher, without procuring the consent of Mr. Tilton." Mr. Moulton immediately procures the consent of Mr. Tilton, and then complies with the demand of Mr. Beecher. Now, why have they given these letters and this demand? How was the demand permissible except for the purpose of showing an unfriendliness of sentiment on the part of Mr. Moulton—except for the purpose of arguing that when Mr. Beecher demanded from Mr. Moulton that he should produce these papers before the Committee he refused. And as the evidence now stands, Sir, if you strike out the latter part of this witness's testimony, that is the attitude in which this witness is placed.

Judge Neilson—That should be stricken out and should be the subject of a question; so that it can be objected to. It is consistent enough up to that point.

Mr. Fullerton—When you got the consent of Mr. Tilton therefor, did you go before the Committee, and, if so, what did you do?

[Objected to.]

Judge Neilson—No, that is wrong; did you take the papers before the Committee?

Mr. Beach—Did you go before the Committee and tender the papers demanded by Mr. Beecher?

[Objected to.]

A. I did.

Mr. Fullerton—That would be objected to on the ground that it was leading; and, therefore, I ask him what he did when he got there. After you got that consent what did you do with the papers?

Mr. Evarts—That we object to.

A. I withheld the papers at the solicitation of Gen. Tracy, Mr. Beecher's representative, from the Committee, in consultation with my counsel, Gen. Butler.

Q. What, subsequently, did you do with the papers? A. I published my—I published the—I produced the papers quoted. It needs an explanation, your Honor.

Judge Neilson—The question is, whether you took these papers to the Committee or furnished them. A. No, I didn't take them to the Committee.

Mr. Fullerton—Or, furnished them? A. I did not; and I will tell you why.

Mr. Morris—You were going on to state—

The Witness—I went before the Committee, if your Honor will allow me to state: I went before the Committee next day, and stated to the Committee that, having had the consent of both parties, I should, on a certain day, produce the papers; I think that day was to be Saturday, and the meeting of the Committee was postponed until Monday; and, in the meantime, Gen. Tracy was in consultation with Gen. Butler.

Judge Neilson—Leave that out. [Laughter.]

Mr. Evarts—That is all the *esse*, anyhow.

The Witness—No, it is not.

Judge Neilson—I suppose that what occurs between the witness and Mr. Tracy and Gen. Butler is not to be received.

The Witness—Gen. Tracy claimed to be the representative, your Honor, of Mr. Beecher.

Mr. Evarts—Don't argue about this.

The Witness—I don't choose to argue; I am only stating to his Honor what I think I have a right to state.

Mr. Evarts—Now, none of that is in evidence. These statements made to your Honor, they form no part of the record of the evidence.

Judge Neilson—It is competent for the counsel to prove that those papers, in some form, were furnished pursuant to the demand made on one side, or the demand on one side and consent on the other.

Mr. Evarts—That your Honor has ruled, and that is of course received under the ruling.

Judge Neilson—Well, he can interrogate him then with that view.

Mr. Fullerton—I asked him the reason why he did not—

Mr. Evarts—That is objected to.

Mr. Fullerton—One moment, if you please; there is the point that you cannot talk all the while.

Judge Neilson—Well, without asking him his reason, you can ask what he did in that respect.

Mr. Fullerton—Yes, Sir. I wish to know what he did in that respect, and I wish this witness to be fairly understood in regard to this matter; why he did not go before the Committee and take all the papers; if he did not, there is a reason for it.

Mr. Evarts—That I object to.

Mr. Fullerton—After you got the consent of both parties to these papers, did you go before the Committee and offer to produce them? A. I went before the Committee, yes, Sir, and stated that I would produce them. If you will find the communication, Sir (I don't know where it is in this book), that I made to the Committee—I think it was on August 5th or 6th that I made it, promising to go before them on Saturday.

Mr. Evarts—That is the very one that was rejected by your Honor as not being admissible heretofore.

Mr. Beach—It is made admissible now.

Judge Neilson—Go on.

Mr. Evarts—This is under my exception.

Judge Neilson—I don't intend to have you understand that I rule that any communications made by the witness to the Committee are to be received at present. I haven't that view.

Mr. Evarts—Then I ask that to be struck out.

Judge Neilson—The contents of the paper are not given. We have the naked fact that he sent a communication on the subject to the Committee.

Mr. Fullerton—That is an application to strike out something before it goes in.

Mr. Evarts—I did not move to strike that out.

The Witness—I immediately proceeded, your Honor, to comply with the request of both parties, and went before the Committee for that purpose. That is all that I propose to state.

Mr. Evarts—Now that is not evidence.

Mr. Fullerton—It is evidence because the Court has admitted it. [To the Witness]: Did you go before the Committee after that, and did you take any part of those papers, and if so, what part? A. Yes, Sir; I went before the Committee after that, and I took the papers that were quoted by Mr. Tilton in his state.



ment to the Committee, and there is a reason why I did not take any more, if you want that.

Mr. Fullerton—Well, I want to know the reason why he didn't take—

Mr. Evarts—I object to it. Certainly if the acts of the witness are admitted we are not to take the reasons of his not acting otherwise.

Judge Neilson—That is another question.

Mr. Fullerton—But they seek to condemn this witness because he did not give Mr. Beecher an opportunity of seeing these papers, and because he did not take them before the Committee as requested.

Judge Neilson—You have proved he took the papers before the Committee.

Mr. Fullerton—I have proved he took a part. May I not prove the reason he did not take the rest?

Judge Neilson—No matter about the reason.

Mr. Beach—Suppose Mr. Beecher had told him not to produce them?

Mr. Evarts—Well, prove that.

Mr. Fullerton—How will I prove it, unless you permit me to ask the question?

Mr. Evarts—Now, all those papers, what become of them we all know. Their subsequent history has been testified to.

The Witness—No, it has not. The history has not been—

#### REFLECTIONS ON THE WITNESS RESENTED.

Mr. Evarts—He does not say that he took them before the Committee. The only question is what the reason was he did not take them; that I object to.

Mr. Fullerton—We will see now if we haven't a right to this testimony. I repeat they seek to put this witness in a false attitude, and they mean to keep him there, if they can do so by preventing him from giving the reason why he did not do a certain thing. He had the choice either to give those papers to Mr. Beecher, or to take them before the Committee. He took a part of them before the Committee. I propose to show the reason why he did not take the balance; that it was in harmony with the wish of the other side that they were withheld, as supposed by their suggestion, and at their request.

Judge Neilson—Well, you may prove that.

Mr. Fullerton—Well, I hope I will be able to without a thousand and one interruptions.

Mr. Evarts—I must interrupt when I consider the evidence illegal, your Honor, and I propose to do it.

Judge Neilson—That is understood, and you take an exception to this.

Mr. Fullerton—Well, if the exception is the end of it, I shall be very happy.

Mr. Evarts—Now, I don't propose to be talked to any more. I don't institute any of these observations between counsel, never, and I don't propose to submit to it.

Judge Neilson—You have a right to be heard whenever you think the question calls for it.

Mr. Fullerton—I propose to make just those observations

when counsel insist upon arguing a question that has been decided by your Honor over and over again.

Judge Neilson—I don't think the counsel meant to do that. Go on.

Mr. Fullerton—Why did not you take the balance of the papers before the Committee?

Mr. Evarts—That is objected to.

Mr. Fullerton—That we understand, it is objected to.

Mr. Evarts—I propose to have it entered every time.

Judge Neilson—Now, what is the question?

The Witness—Now, what is the question?

Mr. Fullerton—I am afraid to repeat the question because there may be another objection and exception. [Laughter.]

The Witness—What is the question? Read it.

Judge Neilson—Read the question.

THE TRIBUNE stenographer read the question as follows: "Why didn't you take the balance of the papers before the Committee?" A. On Sunday preceding the Monday on which I had agreed to take the papers before the Committee, Gen. Tracy; if I remember the day correctly, I think I do—went with me to the Fifth Avenue Hotel to see Gen. Butler with reference to the suppression of the statement, and I saw Gen. Butler with Gen. Tracy.

Mr. Evarts—Any interview of that kind we object to. Here is a narrative that took place—supposed to have taken place between Gen. Butler and Mr. Tracy. Now, that is not evidence.

Judge Neilson—Now, if upon that conference he refrained, we want the result; that is all; not the conversation. If, in view of that interview on that conversation, he was restrained or not restrained from taking the additional papers, he may state that fact, as going to show the animus of the witness, acting in good faith or bad faith. Now, get him to do that. [To the Witness.] You had a conversation? A. I had a conversation, Sir. Shall I give it?

Judge Neilson—With Gen. Tracy and Gen. Butler. I don't ask what the conversation was.

The Witness—Very well, Sir.

Judge Neilson [to Mr. Fullerton]—Now, ask the question.

Mr. Fullerton—Did you refrain from taking those papers before the Committee in consequence of anything that occurred there on the occasion to which you refer? A. Yes.

Judge Neilson—Well, that gives it sufficiently.

Q. Who did Gen. Tracy represent on that occasion?

Mr. Evarts—Well.

The Witness—He said he represented Mr. Beecher. [Laughter.]

Mr. Evarts—Well, I objected.

Judge Neilson—Take it, Sir; let it stand. Take an exception.

Mr. Evarts—Yes, Sir.

Judge Neilson—Go on.

Q. Was it with his approbation that you withheld them? A. With whose approbation, Sir?

Q. Mr. Tracy's? A. It was at his request.

Q. And that is the reason why you did not take the balance before the Committee, is it—the balance of the papers? A.

That is one of the reasons. I will give the balance of the reasons. Shall I?

Mr. Beach—No; we have got enough.

Q. Did you have another meeting the next day? A. Yes, Sir.

Q. Where? A. At my house.

Q. Who was present? A. Mr. William C. Kingsley, Mr. Franklin Woodruff, my father and Gen. Butler.

Q. Any one else? A. And my wife.

Q. Was Mr. Tracy there? A. No, I believe not; he came that evening though, after I had been to the Committee.

Q. Did anything occur that evening after you had been to the Committee with regard to these papers that you did not produce?

Mr. Evarts—With whom?

Mr. Fullerton—With General Tracy.

Judge Neilson—I think that is sufficiently accounted for.

Mr. Evarts—Yes, Sir.

The Witness—Yes, Sir; there was something.

Judge Neilson—Well, we will let that stand, then.

Mr. Fullerton—Now, Mr. Moulton, what statement was then under consideration when you thus went to the Fifth Avenue Hotel and had this conversation?

Mr. Evarts—The conversation at the Fifth Avenue Hotel?

Mr. Fullerton—Yes.

Judge Neilson—What statement was under consideration?

Mr. Fullerton—Yes.

The Witness—The first long statement that I prepared, which was preceded in the publication, that I made of it by a card to the public.

Mr. Evarts—You describe it as the first long one? A. Well—

Mr. Fullerton—Never mind! never mind!

The Witness—I can't help minding him.

Mr. Fullerton—I know; this talk back and forth between you and the counsel is out of order, in my judgment.

The Witness—Well, Sir, I beg pardon.

Q. Did you know, or did Mr. Tilton know at any time that he was furnished with money directly or indirectly, from Mr. Beecher? A. No, Sir.

Q. Did Mrs. Tilton know that any money that was furnished to her came directly or indirectly from Mr. Beecher? A. I don't think she did.

Q. You didn't tell her, did you? A. I did not.

Q. Your attention has been called to your intimacy with Mrs. Woodhull? A. Yes, Sir.

Q. And you have stated when it commenced and when it ended, I believe? A. I believe I have; yes.

Q. I want you to state, Sir, now, what caused you to permit or to cultivate that intimacy—acquaintance or intimacy?

Mr. Evarts—The direct examination has gone into that, Sir, and we cross-examined him upon it.

Mr. Fullerton—I have a right to show now, Sir, what object he had in view.

Mr. Evarts—That he showed on his direct examination.

Mr. Fullerton—No, he did not show it.

Judge Neilson—Partially, I think, not wholly.

Mr. Evarts—Just so far as they saw fit. It is *their* subject,

and they were not to leave it unless we have laid a foundation for some inquiry concerning the matters that we brought out; but that is not this inquiry. The question is, what the motives and reasons of his acquaintance with this woman were, which was the very thing which was the subject of direct examination.

Mr. Fullerton—Your Honor will perceive that, since the direct examination, they have put in a portion of this Woodhull scandal, which makes it necessary now that we should account for this gentleman's acquaintance with that woman who promulgated those doctrines.

#### MOULTON'S SENTIMENTS TOWARDS WOODHULL.

Judge Neilson—I think you may ask him what led to that acquaintance, and what let to its continuance.

Mr. Evarts—I will call your Honor's attention to this.

Judge Neilson—I recollect it generally, Sir. I think he may ask what led to that acquaintance and what let to its continuance. [To Mr. Fullerton.] Now put the question, Sir.

Mr. Fullerton—Now, may I go on, Sir?

Judge Neilson—Go on.

Mr. Fullerton—What led to your acquaintance with Mrs. Woodhull, and to its continuance?

Mr. Evarts—Your Honor will note an objection to that as being a recurrence to a subject already affirmatively introduced by them.

Judge Neilson—Yes, Sir.

The Witness—The desire, Sir, entirely, for the suppression of the stories against Mr. Beecher in connection with Mrs. Tilton, and his adultery with Mrs. Tilton.

Q. Were you acquainted with M. s. Woodhull until these scandals were abroad? A. I never was acquainted with her, Sir, before; I never became acquainted with her, Sir, until after her card in *The World*; I stated it already.

Mr. Evarts—That was all stated on the direct.

Q. In which she foreshadowed an intention to publish this scandal? A. Yes.

Q. For what reason was she invited to your house? A. In order that I might use the better my influence upon her for the suppression of the story of Mr. Beecher's adulteries with Mrs. Tilton.

Q. State whether your wife objected to her being brought there? A. My wife did object to her being brought there.

Q. And whom did she consult upon the subject? A. Mr. Beecher.

Q. Were you present when Mr. Beecher gave her some advice on the subject? A. No. Mr. Beecher told me the advice that he gave.

Q. What did he say he advised her to do? A. Mr. Beecher said that my wife had said to him that I had asked that Mrs. Woodhull come to the house; and Mr. Beecher said that my wife had objected; and he said that he told her that he did not think association with Mrs. Woodhull could hurt her, and that he thought it to be her duty to co-operate with me for the suppression of these stories concerning him and Mrs. Tilton.

Q. Had you any sympathy with Mrs. Woodhull in her free-love doctrines?



Mr. Evarts—That I object to.

The Witness—I had not known her, Sir; no, I had not any sympathy with Mrs. Woodhull in her free-love doctrines.

Q. Did you know what her doctrines were before her speech at Steinway Hall upon that subject? A. No, I did not know anything about them.

Q. You were present, I understand you, at that meeting? A. I was—yes, Sir.

Q. You have told us that Mr. Tilton introduced the speaker? A. I have—yes, Sir.

Q. Will you tell us, as near as you can, what words were used in that introduction? A. Yes Sir.

Q. Please to do so?

Mr. Evarts—Well, your Honor.

Judge Neilson—That was proved by you, you know.

Mr. Fullerton—They proved the fact.

Mr. Evarts—Now, can we prove her whole lecture?

Mr. Fullerton—Not by proving what he said, because he did not repeat it.

Mr. Evarts—Can we prove her whole lecture?

Mr. Fullerton—That question does not come up.

Judge Neilson—I think you have it sufficiently; he introduced her.

Mr. Evarts—That is the point of my objection.

Judge Neilson—I think that is sufficient. It don't appear that he commended it.

Mr. Fullerton—They have laid the foundation, as they think, for an argument that Mr. Tilton is to be held responsible for all the doctrines promulgated there that night, because he introduced the speaker.

Judge Neilson—I have decided that he was not, unless it appeared that he knew before what the lecture was to be.

Mr. Fullerton—I may prove what he said when he introduced her, I suppose.

Judge Neilson—I do not see the value of it; it is not suggested that he commended her.

Mr. Fullerton—But it will be argued that he commended her.

Judge Neilson—I hardly think it.

Mr. Evarts—We certainly shall argue that the introduction of a lady to a public audience to deliver a free-love lecture is an assumption of responsibility towards the public for what she has to say.

Mr. Fullerton—Your Honor therefore sees you cannot anticipate what they will argue on the other side.

Mr. Evarts—The measure and extent of it, of course, is a subject of argument.

Judge Neilson—I have already ruled, I think, that unless it appears that Mr. Tilton knew what the lecture was to be—what the subject was to be—he was not responsible for the lecture following the introduction; and not being a prophet, or the son of a prophet, he could not foresee what she was to say.

Mr. Fullerton—Your Honor has been admonished by the counsel on the other side as to the line of argument they design to follow.

Judge Neilson—I think I shall take care that the jury shall not misinterpret it. I think there will be no misconception.

Mr. Fullerton—There will not be, if we are permitted to give this evidence.

Judge Neilson—I have decided that point.

Mr. Beach—It seems to me this question is altogether aside from that. It appears that Mr. Tilton introduced Mrs. Woodhull to the audience. Now is it to be seriously argued, when they prove the result of what Mr. Tilton said and did upon that occasion, that we cannot get at the details, and ask what he said by which he did the act which they prove he did.

Judge Neilson—If you did not introduce her, you could prove it, of course, by way of contradiction, but if all you did do was to introduce her, you can well afford to leave it there.

Mr. Beach—What is an introduction? We may afford to leave it under your Honor's ruling; but, Sir, I submit, when they prove an act done by Mr. Tilton, which must of necessity be accompanied by words, and do not give the words, may we not prove them?

Judge Neilson—I do not think that it is material. He went forward with his coat on his arm, and introduced her. That is all we have.

#### MINING UNDER THE CROSS-EXAMINATION.

Mr. Beach—He must have said something to introduce her.

Judge Neilson—It cannot be material here.

Mr. Beach—Your Honor will perceive that it may be immensely material to us, Sir. Suppose Mr. Tilton had said in that introduction to the audience, "Ladies and gentlemen: I am requested to present Mrs. Woodhull to you this evening, but I caution you that I am not responsible for anything she may say." Is not that admissible, Sir?

Judge Neilson—You may prove that if you can.

Mr. Beach—It is just what we are going to prove.

Judge Neilson—I hardly think it is to be expected that a gentleman would take such a precaution as that.

Mr. Beach—Very possibly, but I give it as an illustration.

Judge Neilson—We will take it.

Mr. Evarts—Your Honor will note our exception.

Mr. Fullerton—Repeat, as nearly as you can remember them, the words with which he introduced Mrs. Woodhull to the audience at Steinway Hall on that evening? A. Do I need, in the answer to that question, to precede that introduction at all?

Q. No.

Judge Neilson—When he came forward with his coat on his arm, to introduce her, what did he say? A. As nearly as I can remember, Sir, I have not read it.

Mr. Evarts—We ought to know whether he remembers anything about it.

The Witness—I shall give it as nearly as I can recollect it: "Ladies and gentlemen—It is quite unusual for me to be in town during the lecture season, and I unexpectedly find myself here to-night. I find that several representative men have been asked to introduce the lady who will address you, to this audience, and some have refused on the ground that they knew nothing of her character, and others on the ground that they are in doubt as to her views. As to the first, I think I know that, and will therefore take the responsibility of vouching for

it. As to the second point, I do not know what her views are. I have never heard her express them. She may be a fanatic and a fool. I would rather be both in one than to lack the courage to ask from an American audience, for a woman, the right of freedom of speech." [Laughter and applause.]

Q. Was that the substance of it? A. That was the substance of it, except the applause that followed. [Laughter.]

Q. Then followed the lecture? A. Then followed the lecture; yes, Sir.

Q. Now, Mr. Moulton, did you and Mr. Tilton have an engagement that evening at a place other than Steinway Hall? A. Yes, Sir; we did.

Q. Whose proposition was it to go to Steinway Hall that night? A. Mr. Tilton had an engagement to dine with me at my house, and I went to *The Golden Age* office for him to have him come to my house, and he said—

Judge Neilson—Do not say what he said.

Mr. Fullerton—I propose to show that going to Steinway Hall was merely accidental that night.

Judge Neilson—Prove that; not by conversation.

Mr. Fullerton—I can hardly prove it in any other way.

Mr. Evarts—That is the trouble. The conversation between him and Mr. Tilton does not prove as against Mr. Beecher how he happened to go there.

Judge Neilson—No.

Mr. Evarts—That is the trouble with all of it, that the proof, so far as we are concerned, does not derive any authority from anything that proceeded from us.

Judge Neilson—Mr. Fullerton, go on.

Q. At whose suggestion was it that you went there that night?

A. Mr. Tilton said that as we had not—

Judge Neilson—Do not say what was said.

The Witness—I beg pardon.

Mr. Evarts—I object to the question at whose suggestion he went, unless Mr. Beecher is connected with it. Your Honor can see that the whole narrative of these two men's lives can be given under this.

Judge Neilson—We do not propose to take the conversation at all. At whose suggestion?

Mr. Fullerton—At what time in the afternoon or evening was the suggestion made?

Mr. Evarts—That I object to.

Judge Neilson—We will take it.

The Witness—About six o'clock, between five and six.

Mr. Evarts—Why is it at all material, your Honor, and how does it become evidence against us, whether it was accidental or whether the suggestion of third persons, or the suggestion of a newspaper, or what not? It has not the quality of evidence bearing against us in this case.

Judge Neilson—I think it should be received, Sir.

Q. What time in the afternoon was the suggestion made?

Mr. Tracy—Your Honor will note our exception?

Judge Neilson—Yes, Sir.

A. Between five and six o'clock, Sir.

Q. What was your dinner hour? A. Six.

Q. You had no thought then of going to Steinway Hall until that suggestion was made? A. No.

Mr. Evarts—That I object to.

The Witness—No.

Judge Neilson—They certainly have a right to prove that this introduction which you have shown came about casually or accidentally, was not a fixed, set purpose, or whatever the character of it was, not to give conversations. That is the extent of my ruling. Go on, Sir.

Mr. Evarts—Your Honor has my exceptions?

Judge Neilson—Yes, Sir.

Q. You have spoken of the Produce Exchange. That is an institution in New York, I believe? A. Yes, Sir.

Q. Are you a member of it? A. I am.

Q. How long have you been a member of it? A. For a good many years. I don't know how many.

Q. How many members are there in that institution? A. I think there are 2,000 or 2,500.

Q. How many are there in daily attendance, generally? A. I should think 1,500 or 2,000, as near as I can estimate it.

Q. How frequently do you attend the Produce Exchange? A. Every day—every business day, when I am in town.

Q. Now, will you state how many different men—give us some kind of an estimate—accosted you in reference to this scandal, after these statements were made? A. A great many, Sir. I don't know how many. A great many.

Q. Give us some idea of the number—the daily number that accosted you concerning it after this scandal broke out?

Mr. Evarts—You mean after the Woodhull publication?

Mr. Fullerton—Yes, Sir.

A. I don't know; 15 or 20 a day, I should think, during the excitement of it, at least.

Q. Sometimes more? A. Yes, Sir.

Q. What was your object in answering them?

Mr. Evarts—That I object to.

The Witness—To mislead.

Mr. Evarts—That I object to, if your Honor please.

Judge Neilson—That is already ruled upon.

Mr. Evarts—I object to it as evidence in itself. Every man is to be judged by his words.

Judge Neilson—I cannot take that.

Mr. Fullerton—It was not objected to at the time he did it.

Mr. Evarts—Certainly.

Mr. Fullerton—No, Sir; it was all right then. I have a right to prove why he did it, and who approbated it.

Mr. Evarts—Then you get the evidence; but your asking him why he did it does not get any evidence.

Mr. Beach—Your Honor, we have not proved that, except in very general terms. They put questions to this witness, and proved his declarations made to specific parties at specific times and places. We now propose to prove by him that those declarations which he admits to have made were made with this same purpose, that he spoke of it generally, and to show that the answers which he gave were dictated by Mr. Beecher.

Judge Neilson—That is a modification of the question put. I think that view is correct. Your question related to all the persons that accosted him.

Mr. Fullerton—Certainly it does.



Judge Neilson—The question, if limited to those whose names have been given by them—

Mr. Fullerton—Well, they are legion, Sir.

Judge Neilson—I think he may answer that, as to all those.

Mr. Evarts—He may answer whatever Mr. Beecher said to him concerning all those.

Judge Neilson—All those, Sir.

Mr. Evarts—But nothing else, of his own movements, of his mind and reasons.

Judge Neilson—He may state his reasons, provided he afterwards communicated it to Mr. Beecher.

Mr. Evarts—Well, but are we to assume that he did? Your Honor has frequently said that the better way is to begin with what he did communicate to Mr. Beecher.

Judge Neilson—Well, we have some evidence on the subject already.

Mr. Evarts—It is already in.

Judge Neilson—Yes; now as applied to these persons.

Mr. Evarts—We don't want more brought in unless it is brought in legitimately.

Judge Neilson—In regard to these persons you have named.

Mr. Evarts—That is, whatever passed between Mr. Beecher and this witness concerning any of these witnesses, separate from what is already introduced, I suppose might be legitimate evidence; but that is not the point of the present inquiry.

Mr. Fullerton—What object had you in view in replying to those people in the Produce Exchange who accosted you and questioned you in reference to this scandal?

Mr. Evarts—That we object to.

The Witness—To give Mr. Beecher a character for purity.

Mr. Beach [To the witness]: They object. You should not answer.

The Witness—I beg pardon.

Mr. Evarts—Your Honor heard the question?

Judge Neilson—Yes, Sir, I admit it, and you take an exception.

Judge Neilson—He has answered.

The Witness—I have answered.

Q. What idea did you mean to convey to these people?

Mr. Beach—I would like to have the answer read.

THE TRIBUNE stenographer read the answer referred to as follows: "To give Mr. Beecher a character for purity."

Q. You used appropriate language for that purpose, did you? A. Yes, Sir.

Mr. Evarts—That I object to. The words he used are the words to be given in evidence.

Judge Neilson—You have got it.

Mr. Evarts—What authority is there to ask a witness to state evidence, and then ask for a statement by the witness himself that he used words appropriate?

Judge Neilson—As he understood it.

Mr. Evarts—I understood that; but, your Honor, how does it become a subject of evidence, when it is what he said that you and the jury must judge of, and not take the witness's construction?

Judge Neilson—We will take it.

Mr. Evarts—I move to strike out the answer.

Judge Neilson—Denied.

Mr. Evarts—We except.

Judge Neilson—Proceed.

Q. What passed between you and Mr. Beecher in regard to what you said, or what you were to say to any persons, who catechized you on the subject?

Mr. Evarts—That we object to, as they have examined him about it.

Judge Neilson—I think that is proper if applied expressly to any of these gentlemen whom you have named.

Mr. Evarts—Undoubtedly. If they will take Mr. Buck or Mr. Swan or Mr. Baxter—

Judge Neilson—You need not name him.

Mr. Evarts—There is the point, if your Honor please.

Judge Neilson—You have named them all and the answer of the witness should be applied to some of those persons.

Mr. Evarts—Now, if your Honor please, it is not permissible for this witness to apply the past evidence argumentatively to these people. That is *his* affair. What Mr. Beecher said to him he has already testified to. Now, if he has anything more that Mr. Beecher said to him concerning these particular cases, he may now be inquired of undoubtedly upon the particular cases having been brought in by us. But that is not the effort. The effort is not to give any new fact concerning Mr. Beecher, but to apply by the witness's argument or statement some previous statements of Mr. Beecher, to these particular circumstances.

Judge Neilson—I don't know whether they were previous and general or not.

Mr. Evarts—I ask to be guarded against any such consequences. If each of these cases can be put to the witness, and it is said, "What did Mr. Beecher say to you concerning what you said or what you should say to Mr. Swan?"—that is a question, possibly, admissible.

Judge Neilson—It is not to be expected that the witness could have gone to Mr. Beecher and said to him, "I had a conversation with A. and told him so, and with B. and told him so and so."

Mr. Evarts—It is not for us to suppose what could and could not be done.

Judge Neilson—Mr. Fullerton, will you proceed? I think there is a line proper—

Mr. Evarts—There is a limit, if your Honor please.

Judge Neilson—No doubt there is a limit. [To Mr. Fullerton]: You must have an idea.

Mr. Fullerton—I have a distinct idea, and that idea is shadowed forth in my question.

Judge Neilson—Go on, in respect to any of these persons named on the cross-examination.

#### ADVICE TO NEWSPAPERS.

Mr. Beach—Now, if your Honor please I must interrupt this examination for the purpose of stating to your Honor a fact which has just been communicated to me by a gentleman who acts here as a reporter. He states to me that he has received the points from some of the counsel engaged in this case, and they are not counsel upon the part of the

plaintiff, in regard to a review which he is writing of the cross-examination of the testimony of Mr. Moulton. That will be, Sir, a commentary upon the proceedings in this trial, which I undertake to say will be a statutory contempt, subjecting the party who writes it to proper dealing on the part of this Court; and I ask your Honor to admonish that gentleman, and any other person who appears here under favor of the Court to report the proceedings of this trial, to abstain from comments of that character. I don't know, Sir, whether they will be favorable or unfavorable, I care not what their character may be. We ask no such favors from the press, and I give the gentlemen notice that if any paper whose reporter is admitted to the floor of this Court upon this trial, publishes comments upon the statement of Mr. Moulton or any other witness, that I shall bring the matter formally before the Court under proceedings for contempt.

Judge Neilson—Of course I can now do no less than make the suggestion that you think I should make, that it would be well for the gentleman to refrain. My source of security all along has been that the Jury do not, pending this trial, read the papers. I am entirely satisfied they do not. Beyond that I have no way—

Mr. Beach—By statute, Sir, it is made a contempt of the Court for the public press to comment upon the proceedings of a public trial, and gentlemen who do it are brought under the jurisdiction of the Court; and, I think, Sir, that our causes have suffered prejudice enough, upon the one side or the other, by what I deem an entirely impertinent and improper interference of the press by those comments.

Judge Neilson—The press should refrain, undoubtedly, from those points. Still, I say the security is with the Jury and in their faithful observance of what has been said to them, because if the New York or Brooklyn papers should refrain from comments we have no assurance that the New-Jersey or Philadelphia papers would do so.

Mr. Beach—They are out of our jurisdiction.

Judge Neilson—They may come to the eyes of the Jury. Proceed.

[THE TRIBUNE stenographer reads the question.]

Q. What passed between you and Mr. Beecher in regard to what you said, or what you were to say to any person who criticised you on the subject?

Mr. Evarts—That we object to as recalling what has been already testified to on the subject.

Witness—Can I answer it?

Judge Neilson—Proceed.

The Witness—I remember, Sir, having said to Mr. Beecher that I had been questioned by Mr. Baxter on the subject, and by others whose names I do not now recollect, and that I had undertaken to mislead them, by stating to them, in the first place, that if the story was true, it was infamous, and if false, it was diabolical; that if his life was not an answer to it, I did not choose to make any, that I did not think it was necessary; that being pressed close I had denied the truth of the criminal intercourse with Mrs. Tilton, and said he was a pure man. And he thanked

me; he said he thanked me for doing that; and he said there was only one way, since lying was necessary, and that was to lie sublimely.

Q. Do you recollect the conversation had with Mr. Halliday? A. Yes, I remember that.

Q. What was that conversation? A. The purport of it was that Mr. Beecher was a guiltless man. This I told Mr. Beecher: that I had undertaken to tell Mr. Halliday it was a shameful proceeding for deacons to dig into a scandal that had been already settled amicably between the parties, and Mr. Beecher thanked me.

Q. Do you recollect the letter put in evidence from Mr. Beecher to yourself, wherein he says, in substance, "your conversation with Mr. Halliday was quieting?" A. Yes; I saw him after that letter, too.

Q. What took place after that letter? A. He spoke of the letter, and thanked me for my interview with Mr. Halliday.

Q. Mr. Halliday was the Assistant Minister? A. Yes, Sir. Have you got the letter?

Q. Your interview with Mr. Halliday satisfied him? A. Something of that sort.

Q. What did Mr. Halliday question you about? A. Mr. Halliday asked me about the stories against Mr. Beecher and his alleged intercourse with Mrs. Tilton, &c.

Q. Did he tell you his object in making those inquiries? A. He said something about a Deacons' meeting; I don't know exactly what it was.

Mr. Evarts—This has all been given in evidence before on the direct.

Judge Neilson—You have called out the conversation with Mr. Halliday since.

Mr. Evarts—That is this witness's conversation with Mr. Halliday.

Mr. Beach—You asked for it.

Judge Neilson—The general rule is that counsel shall not have the witness repeat the evidence given on the direct. No doubt that is the rule.

Mr. Beach—Undoubtedly, Sir. We do not seek to do that. After the interview with Mr. Halliday he talked with Mr. Beecher about it.

Mr. Evarts—That is the only reason you got it in before. [Reading]: "What was the subject of the interview? A. The subject of the interview was with Mr. Halliday. Mr. Evarts—Did you repeat it to Mr. Beecher? Witness—Oh, yes, Sir. I talked with Mr. Beecher about it afterwards." Then Mr. Fullerton went on, "Q. What was the subject of the interview between you and Mr. Halliday?" And then he goes on and gives the whole interview.

Judge Neilson—You are correct if what you refer to is this interview.

Mr. Evarts—Undoubtedly. No other.

Judge Neilson—The counsel must accept the admonition.

Mr. Fullerton—From whom do I understand it comes, your Honor? I am entirely correct. I am only proving something that grows out of the cross-examination, referring to this branch of the examination; not elicited on the direct.

Judge Neilson—You have a right to do that.



Mr. Evarts—My objection is, it is not that it is the direct examination reproduced, out of which the cross-examination grew, that he is now inquiring about.

Mr. Beach—We proved the conversation with Mr. Halliday, and we are proving it was repeated to Mr. Beecher.

Mr. Evarts—That you have proved also. The only reason you proved your conversation with Mr. Halliday was, that you proved it was repeated to Mr. Beecher.

Mr. Beach—Yes, Sir; but we have not proved what Mr. Beecher said. You (Mr. Evarts) did not read that. Mr. Tracy says you have been reading it. You read what passed between Mr. Halliday and the witness.

Judge Neilson—If my memory is correct, I learn now, for the first time, that after this interview with Mr. Halliday, Mr. Beecher approved and thanked him for what he said. I think that is new matter.

Mr. Evarts—That is all here in the direct. May I say just how it was; I have it here: "I repeated it to Mr. Beecher, and Mr. Beecher thanked me for it."

Mr. Fullerton—Look at the letter of June 1st. It is the letter marked "Exhibit D 43," to which I call your attention. Do you recollect that? A. Yes, I recollect it; my letter.

Q. I call your attention to the phrase: "You can stand if the whole case were published to-morrow." What is it you meant by that expression?

Mr. Evarts—That I object to. There is the expression. It is plain English.

Judge Neilson—I think he can tell what it refers to. I do not think he can tell what it means. The question here is whether you can ask the witness to give the construction of a passage which is very good English. I think you cannot.

Mr. Fullerton—You cannot if it is in a contract; but if in a letter written by a witness on the stand, who has no interest in the suit, you can always.

Mr. Evarts—I object to any evidence which goes to interpret this plain language.

Judge Neilson—I so rule.

Mr. Evarts—The question is not allowed.

Judge Neilson—The witness writes with a certain intent, certain words, what the other side understand according to the fair and reasonable interpretation of what is written. I think it must stand in that way.

Mr. Fullerton—This letter is given in evidence, not for its effect upon the case, but for the purpose of affecting the witness on the stand.

Q. Had you any conversation with Mr. Beecher about the time of writing that letter? A. Yes, Sir; on Sunday night.

Q. When was that letter written? A. On Sunday morning.

Q. State, if you please, what that conversation was?

Mr. Evarts—Has not that been gone into before?

Mr. Fullerton—No, Sir.

Mr. Evarts—Was not every interview gone into with Mr. Beecher?

Judge Neilson—He is to take that conversation with special reference to this letter.

Mr. Evarts—If there was any.

Mr. Fullerton—Yes, Sir.

Mr. Beach—Or with reference to that expression, that he could stand if the whole case were known, etc.

Mr. Evarts—Primarily, every interview I have gone into; they have no right to inquire into it except in reference to our inquiries concerning it. The introduction of this letter is not an inquiry of ours concerning the interview, and if everything we introduce is to give a right to additional statements and interviews that have already been passed through and exhausted, why, of course, it is idle for us to give any evidence.

Judge Neilson—Such a thing might happen, as that evidence might be given on your part that would bring something to the mind of the witness not suggested or inquired about before. Go on.

Mr. Fullerton—State the conversation.

Mr. Evarts—I object to this general referring to an interview already given in evidence.

The Witness—Mr. Beecher came to my house on the evening of the Sunday on which this letter was written, and I said to Mr. Beecher, "You never give me any strength at all. If I was to follow you my hands would drop useless. You give me no courage; you give me no hope. Whenever there is an emergency to face in the matter, whether it is easy or whether it is hard to meet, you drop; you don't suggest the way out. Now, if you were to express to your congregation the contrition which you have expressed to me in consequence of your intercourse with Mrs. Tilton, they, in my opinion, would forgive you, and you could stand. I don't see any necessity for the hopelessness of your letter this morning. It is nothing but discouragement, and that is what I meant by the expression, 'You can stand if the whole case were known.'"

Q. What reply did he make to that? A. He considered that the card that was published on the morning of June 2d—

Judge Neilson—Did he make any verbal reply then and there? A. He said he could not feel hope, he was hopeless. He could not help expressing his feeling. That was the substance of what he said, and he said he came to me for strength. That is what he came for, he said.

Mr. Tracy—Did he say that more than once to you? A. Yes, Sir; many times.

Q. Did he ever say that to you of a Sunday evening on his way to church? A. This was Sunday evening; I am talking about this Sunday evening.

Q. What did he say on one occasion, or more than one occasion, of the meeting when he was on his way to church, when he would stop at your house?

Mr. Evarts—Is this not something we have gone into?

Judge Neilson—Counsel ought not to repeat what has been gone into; I hope he won't.

Mr. Evarts—The question is not whether it is a repetition of what was said. The question is whether it is a recurrence to a subject that he went through with, which is not lawful except in connection with something we have shown on cross-examination.

Mr. Fullerton—It is not a recurrence to a subject which has been gone through with.

Judge Neilson—Go on.

WEAKNESS OF MR. BEECHER DWELT UPON.

The Witness—He used that expression or the substance of it to me very often on Friday evenings, before going to his prayer meeting, and on Sundays, and on various days of the week; I don't recollect the particular days.

Q. What was the expression? A. On which evening—on this evening?

Q. No, that we have got; on the other evenings. A. He said he wanted to get help and courage enough to face his people.

Q. Did you relate on your cross-examination all that occurred between you and Charles Storrs, when you went to see him in reference to the report which the Committee contemplated? A. I did not relate the whole of that—the cause of it, and all about it.

Q. I want you to relate all the conversation between yourself and Charles Storrs, if you did not relate it on your cross-examination? A. I told Charles Storrs, as near as I can recollect, that when I was at Lowell Gen. Butler read to me from the Boston papers that the Committee were not going to cross-examine me, and that I then telegraphed my partner, Mr. Woodruff, to see Mr. Sage, and tell him that I should be in New-York the next morning for cross-examination; that I had telegraphed Mr. Woodruff to have him (Charles Storrs) come to see me, and I presumed that he was there in answer to that dispatch, and I said to Mr. Storrs, "Mr. Storrs, Mr. Beecher has confessed to me, in the presence of another, adultery with a woman other than Mrs. Tilton. My counsel deemed it necessary that the papers and statement which I made to him concerning that event should go into the statement which I am about to make. I understand your brother is a member of this Investigating Committee. I want to say to you that I would like to have you see your brother, and not have him sign that report until I have had an opportunity to be cross-examined upon the statement which I have published. I want you to particularly put it upon that ground, namely, that I don't want to have him sign that report until I have had an opportunity to be cross-examined by the Committee;" and Mr. Storrs said to me, "I suppose you refer to a lady," &c., mentioning her name, and I said, "I do not mention any names. My disposition is not to hurt anybody. I have sent for you as a friend to come here for the purpose which I now explain to you," and that is what I said to Charles Storrs, as near as I can remember.

Q. Did you say anything on this subject to this effect, that your cross-examination would do away with the necessity of publishing a statement? A. Yes, Sir; I said something of that sort to him, substantially that; I said to Charles Storrs that Mr. Beecher had mentioned the woman's name, and he did.

Mr. Evarts—That last is not good evidence.

The Witness—I don't know whether it is or not.

Mr. Evarts—It is not without the inquiry, and the witness is not to volunteer evidence.

Judge Neilson—I don't know that he intends to volunteer.

Mr. Evarts—I didn't say he was intending to volunteer.

Judge Neilson—I think that last statement should be struck out.

Mr. Beach—Not the whole of it.

Judge Neilson—The statement that Mr. Beecher mentioned the lady's name.

Mr. Evarts—That is within your Honor's allowance, but the witness went on to state, "and he did state," etc.

Judge Neilson—Strike that out.

Q. Was what you said to Charles Storrs, true?

Mr. Evarts—That I object to.

Judge Neilson—That is ruled out. It is true as far as concerns himself and his examination, and what he said by the advice of counsel.

Mr. Evarts—They cannot give evidence in that way, by asking a man if what he told him on a subject was true.

Judge Neilson—I have ruled on that. Your comprehensive statement would get in that what this witness said to this third person was true.

Mr. Fullerton—No; was it true that Mr. Beecher made that statement to him, not that Mr. Beecher's statement was true.

Judge Neilson—No.

Mr. Fullerton—I would like to show that what the witness said to Mr. Storrs was true.

Judge Neilson—It is not material to us at all.

Mr. Fullerton—In your cross-examination you stated that Mr. Tilton told you his wife had been before the Committee, and had left the house. What else did he state to you in that conversation? A. That his wife had been before the Committee, and that he had left the house.

Q. That he had left the house in consequence of it, I understood you to say. A. Yes, Sir, it was in consequence of his wife having been before the Committee, and he said that he should never go back to it.

Q. Give us the whole conversation.

Mr. Evarts—That depends on whether it relates to this subject.

Judge Neilson—A subject you introduced.

Mr. Evarts—We prove the single fact that he left the house and that he told him so, and that he advised him to go back.

Judge Neilson—Is not the rest of the conversation material?

Mr. Evarts—If it related to other matters.

Judge Neilson—No, if it related to this matter.

Mr. Evarts—If it related to his leaving and going back.

Judge Neilson—If it related to the subject matter of the conversation.

Mr. Evarts—Your Honor sees that if, under cover of that, a narrative of conversations of what passed between Mr. Tilton and his wife, in general relating to this matter of controversy, is to be introduced, it is a very different inquiry.

Judge Neilson—The general proposition is that you, having introduced part of the conversation, he can call for the rest.

Mr. Evarts—All that relates to that subject, I apprehend, and nothing more. If in the same interview, they go on and talk of other matters, I have not introduced anything, of course.

Mr. Beach—We do not differ with the counsel in regard to the rule.



Mr. Fullerton—Not at all. The gentleman is making objections before the questions are asked.

Mr. Evarts—The questions are general, and the disposition of the witness is to answer freely.

Mr. Fullerton—I am glad to hear the gentleman's good opinion of him.

Mr. Evarts—That is so.

Mr. Fullerton—Answer the question.

The Witness—He said he had told his wife that he had not known of the appointment of the Committee, and she had not told him that she was going, and he didn't want her to go to any Committee without consulting him and letting him know she was going, and he didn't like that sort of conduct. That was substantially the point.

Q. Did he state whether or not he was informed of the substance of that statement, or that he was ignorant of it? A. He did not know anything about it.

Q. He did not know anything about it? A. No, Sir.

Q. Did he state in that conversation when he first heard of the appointment of the Committee? A. I think he stated that that was the first he had heard of it. I do not recollect distinctly about that; I think that is what he said—that he had not heard of it before that.

Q. Do you recollect when this conversation took place? A. It took place during the week of the 5th of July, I think; between the 5th and the 12th of July, I think.

Q. Do you know how soon it was after Mrs. Tilton had been before the Committee? A. How soon it was after what?

Q. After Mrs. Tilton had been before the Committee? A. I think she had been before the Committee that day—the evening on which he saw her, if my recollection serves me right.

Q. (Handing paper to witness) I now put in your hand Exhibit D 45, which is the proposed report of Mr. Tilton in his handwriting. From whom did you receive that? A. I think from Mr. Tilton.

Q. What did he say in regard to it at the time he gave it to you?

Mr. Evarts—That we object to, if your Honor please—whatever he said concerning the use of it, or whatever was to be done with it. If that is introduced by us, why, that is all very well. A discussion on the subject between these two gentlemen, because we have proved an act of Mr. Tilton with the paper, does not seem admissible.

Mr. Fullerton—Of course, we have a right to show what Mr. Tilton said when he passed the document over. Your Honor understands perfectly well that in that period of the history of this scandal, they were doing a great many different things for the purpose of concealing from the world the truth, and this was one of the schemes for that purpose that was to patch up and gloss over this whole affair. It was for the purpose of saving his wife and children that this was got up.

Judge Neilson—I think you are confined to any conversation he had with, or in the presence of, or that was brought to the knowledge of Mr. Beecher.

Mr. Fullerton—I don't want to imitate the counsel on the other side, by arguing a question after it is decided; but I ask your Honor to consider, for a single moment, that I am now

trying to prove what Mr. Tilton said at the time of the actual handing of that paper to Mr. Moulton.

The Witness—Mr. Tracy was a party to it, and he said he remembered Mr. Beecher.

Mr. Beach—Counsel on the other side conceded we had a right to show what Mr. Tilton said as to the paper, and what was to be done with it.

Judge Neilson—Instructions, of course.

Mr. Evarts—That is, instructions as to that paper; but not conversations concerning its contents.

Mr. Beach—Not concerning its contents. We are not going to ask anything in regard to its contents; but if I hand your Honor a certain paper, with a request to do a certain thing with it, for a certain purpose,—is not that evidence?

Judge Neilson—Yes, Sir.

Mr. Evarts—If I say, "I give you that paper to give it to Mr. Beecher"—But to say, "I give it to you for the purpose of deceiving him,"—that is not an admissible conversation.

Mr. Beach—I say it is. I give you a paper, and I say, "I want you to use that paper in a particular way, for a particular purpose."

Judge Neilson—That you may show.

Mr. Evarts—That is to be shown against them, and not in favor of them.

Judge Neilson—We cannot see how that will be.

Mr. Evarts—We could show that if we saw fit. We proved their action, and then they endeavor to explain, by words that passed between them, their action, which we, by way of cross-examination, can prove, because we affect them with what they say; but they cannot affect themselves as towards us, with what passed between them.

Mr. Beach—Let me put an illustration to your Honor. I consider this rule of some practical importance, and I pledged myself to furnish to your Honor authorities sustaining the proposition which I submitted a while ago, that wherever the act of any party is given in evidence his declaration accompanying that act is admissible to explain or to qualify. It is a general and fundamental proposition of evidence; and, suppose, if the gentleman's doctrine was applied to all the various circumstances which arise in a court of justice—suppose a man was indicted for striking me, Mr. Evarts comes to me and delivers a blow in my face, and at the instant of delivering that blow he accuses me of having injured him in some form. He gives the motive and the purpose with which he delivers that act. Can that act be proved against Mr. Evarts without permitting him to give the declaration accompanying the act, showing the motive and the purpose. Suppose he said to me, "Mr. Beach, you have assaulted me, or you have circulated infamous slanders against me or my family," may not that be given in evidence to characterize the transactions? And whoever heard that declarations accompanying an act given in evidence against a party or a witness cannot be given for the purpose of explaining the circumstance and the motive which is to qualify and characterize the transactions? What is the meaning of the rule of law that what happens upon a particular occasion may be given in evidence as a part of the *res gestæ*, whether they are acts or declarations. Anything

which is material to be proved, may be proved by the accompanying and surrounding circumstances.

Judge Neilson—Material to the act?

Mr. Beach—Certainly, your Honor, material to the act.

Judge Neilson—I think you agree about that. Proceed, Mr. Fullerton.

Mr. Evarts—Let me say this: My learned friend puts to you a case which is within the recognized rules of evidence, although the case otherwise is not a supposable one, either that he should have given me an offense, or that I should have struck him in the face. But I deliver the blow, and at the same time say, as accompanying the act, to the man to whom the blow is given, what is sought is to be affected by the blow. That is a spoken act. That is not hearsay. That is a part of the blow; but here the point is—

Judge Neilson—It goes to the question of malice.

Mr. Evarts—It is a part of the blow. It is a spoken act. Some confusion, no doubt, arises in lawyers' discussions about hearsay, because that comes by word of mouth, but your Honor is familiar with the distinction that our learned friend has given, of a spoken act—of the act of doing; but here we give a paper as used in a certain way, to wit, a paper written by Mr. Tilton, and brought by Mr. Moulton from Mr. Tilton, and proposed in a subsequent conversation to be read before the council. We have a right to show that Mr. Tilton did take the paper. Now, if he gave instructions to take the paper, and lay it before the council, or carry it to Mr. Beecher, that is a part of the act of delivering it to him; it comes within the spoken acts; but this question is large enough to draw out, and so, I suppose, is intended to draw out a larger line of mere hearsay evidence, to wit, conversations between Mr. Moulton and Mr. Tilton with which Mr. Beecher cannot be affected.

Judge Neilson—That distinction must be observed. Go on Mr. Fullerton.

Mr. Fullerton—When anything comes out that is a refraction of the rule counsel can raise his objection.

Mr. Evarts—We have a right to have questions properly framed.

Mr. Fullerton—The Court says the question is proper. I repeat the question.

Mr. Evarts—What is the question?

Judge Neilson—Let the stenographer read it.

[THE TRIBUNE stenographer read the question].

Mr. Evarts—I understand your Honor's instruction is, what is to be done with the paper?

Judge Neilson—What he said in regard to it—the paper.

Mr. Evarts—That will cover its contents. I object to the question, if your Honor please, and you will please note my exception.

The Witness—Mr. Tilton said to me, in accordance with the consultation that had taken place the night before between Gen. Tracy, himself and myself, that he had gone home and that he had dictated in part to Elizabeth a statement for the Committee to sign, which he had copied, and which he handed to me. This was the document: I believe, that he handed to me, and I subsequently—

Judge Neilson—Did he tell you what to do with it?

The Witness—He said it was a report for the Committee in accordance with the consultation, and I saw Mr. Tilton and Mr. Tracy subsequently together, and Mr. Tilton read this to Mr. Tracy, or Mr. Tracy—

Mr. Evarts—We object to this. Mr. Tracy is not Mr. Beecher.

Judge Neilson—The mere act of reading it, I think, is correct.

Mr. Evarts—If read between Mr. Tilton and Mr. Moulton it would not be evidence. If read between Mr. Tilton, Mr. Moulton and a third person it would not be evidence. If it was with Mr. Beecher it would be.

Judge Neilson—He has answered your question. That last should be struck out.

Q. What did you do with that statement you now hold in your hand? A. I kept it.

Q. It was not used? A. No, Sir.

Q. At that time had either Mr. Tilton or Mr. Beecher been before the Committee that you know of? A. No, Sir, I think not at that time, not to my knowledge at all.

Q. Did you have any conversation with Mr. Beecher in regard to that proposed report? A. I don't recollect whether in regard to this one; I think I alluded to this report in the conversation with him in his house.

Q. In what way did you allude to it? A. I think I told Mr. Beecher, during the week of the 12th of July, that Mr. Tilton had prepared a statement.

Mr. Evarts—That is a direct examination that has heretofore been gone into.

Mr. Beach—Not in regard to this witness.

Mr. Fullerton—This report is introduced by the other side. We now learn of it for the first time on cross-examination.

Mr. Evarts—Not at all.

Mr. Fullerton—We learn its contents for the first time.

Mr. Evarts—I think you had the paper in your hand, and that was the long statement, and you put in the short one, and the witness talked about the long one and the short one.

The Witness—I didn't have the long one with me when I went to see Mr. Beecher.

Mr. Fullerton—It was put in evidence on the cross-examination, for the first time.

Judge Neilson—We will take the statement.

Q. In what way did you allude to that statement in your conversation with Mr. Beecher?

Mr. Evarts—I object.

Mr. Beach—Go on.

The Witness—You told me not to go on, Mr. Beach, when there was an objection.

Mr. Beach—I now say you may go on.

The Witness—I told Mr. Beecher, during the week of July 12th, that Mr. Tilton had consultations with Gen. Tracy and myself, in which Gen. Tracy had pictured to Mr. Tilton the interview that his wife had with the Committee; that Mr. Tilton had prepared a statement.

Mr. Evarts—I submit, your Honor, that that precise conversation was given before.



Judge Neilson—It may not have appeared before that it related to this very report.

Mr. Evarts—This very remark—

Judge Neilson—Go on.

The Witness—That he had prepared this report, and that if it had not been for Mrs. Tilton's having left the house, and the publication of his correspondence with the Committee, that this thing would probably have been accepted, because Mr. Tracy had told Mr. Tilton that he thought he could get substantially this adopted by the Committee. That is as near as I can recollect the conversation concerning this statement.

Q. What reply did he make? A. I don't recollect what his reply was. It was at that point that I showed him the short statement which I had in my pocket.

#### HOW BEECHER'S PORTRAIT WAS PRESERVED.

Q. Some importance has been attached to the portrait of Mr. Beecher, that was once hung in your house and has been taken down. I will ask you a single question in regard to it. Where did that portrait hang when you first put it upon the wall—Mr. Beecher's portrait? A. It hung in my parlor in Remsen street on the wall.

Q. Where did it come from? A. It came from Mr. Tilton's.

Q. When? A. I don't recollect the date when.

Q. About what time? A. I should think some time in 1871.

Q. How long did it hang in that place? A. It hung there until Mr. Paige's portrait came there, a few months ago.

Q. Then it was taken down, and Mr. Paige's put in its place? A. Yes, Sir.

Q. What was done with Mr. Beecher's? A. Put up-stairs, on the mantelpiece.

Q. Preserved? A. Yes, Sir.

Q. In good condition? A. Oh! yes, Sir. Standing along side of an engraving of Cupid and Psyche.

Mr. Evarts—I ask that this be stricken out.

Judge Neilson—Yes.

Mr. Evarts—I ask your Honor to state to the witness, who does not yet seem to have learned, that such observations are improper.

The Witness—I understood Mr. Fullerton asked me where it was, and I told him. I didn't mean to be vulgar or abrupt, only to be specific.

#### A SHARP FINANCIAL POLICY.

Q. You were asked in regard to the notes that were given by Mr. Tilton to the various subscribers to the stock of *The Golden Age*. [Handing papers to witness.] Look at the four papers which I now show you, and say whether they are the notes which you alluded to? A. Yes, Sir; those are the ones.

Q. Whilst counsel are examining those notes, I will show you a letter, and ask you whether that is the letter accompanying the return of the note? A. Yes, Sir.

Q. [Handing paper to witness.] Look at the other paper now shown you, and say whether that accompanied them or preceded them? A. Yes, Sir; this is the note that accompanied it.

Mr. Fullerton—I offer this in evidence:

NEW-YORK, September 15, 1871.

\$1,500. For value received, I promise to pay Francis D. Moulton fifteen hundred dollars, with interest at the rate of seven per cent. per annum; the payment of principal and interest to be contingent upon the success of *The Golden Age*, of which newspaper I am the sole editor and proprietor.

THEODORE TILTON.

NEW-YORK, September 15th, 1871.

\$1,500. For value received, I promise to pay Franklin Woodruff fifteen hundred dollars, with interest at the rate of seven per cent. per annum; the payment of principal and interest to be contingent upon the success of *The Golden Age*, of which newspaper I am the sole editor and proprietor.

THEODORE TILTON.

NEW-YORK, September 15th, 1871.

\$750. For value received, I promise to pay John C. Southwick seven hundred and fifty dollars, with interest at the rate of seven per cent per annum; the payment of principal and interest to be contingent upon the success of *The Golden Age*, of which newspaper I am the sole editor and proprietor.

THEODORE TILTON.

NEW-YORK, September 15, 1871.

\$750. For value received, I promise to pay Jackson S. Schultz seven hundred and fifty dollars, with interest at the rate of seven per cent. per annum; the payment of principal and interest to be contingent upon the success of *The Golden Age*, of which newspaper I am the sole editor and proprietor.

THEODORE TILTON.

Mr. Fullerton—They are all signed "Theodore Tilton," and are all marked "canceled."

The notes are put in evidence and marked "Exhibits No. 58," "No. 59," "No. 60" and "No. 61."

Mr. Fullerton—I now offer in evidence this letter.

November 10th, 1872.

DEAR THEODORE:—I have it all fixed. You are free, so be brave. Your notes will all be given up, canceled and returned to you to-morrow. Inclosed find small bill of interest, for which I must ask the money to feed the orphans.

Very truly yours,

F. WOODRUFF.

[Marked "Ex. No. 62."]

Mr. Fullerton—Now, I read this paper.

NEW-YORK, June 11th, 1872.

MR. THEODORE TILTON—

Dear Sir: We, the undersigned, desiring to contribute to the loss sustained by you in establishing *The Golden Age*, do cheerfully return herewith the notes canceled which you gave for money loaned. Wishing you continued success and prosperity in the years to come, and congratulating you on having so successfully founded the paper, and that you are now free from debt,

We are, dear Sir, yours truly,

F. WOODRUFF, \$1,500,  
FRANCIS D. MOULTON, \$1,500.  
JOHN W. MASON, \$1,000.  
JOHN C. SOUTHWICK, \$750.  
J. S. SCHULTZ, \$750.  
J. P. ROBINSON, [by F.  
WOODRUFF,] \$500.

Q. These notes bear date Sept. 15, 1871. I want to know, now, with reference to that date, when the Woodhull biography was written and published? A. It was before that, I believe.

Mr. Evarts—That has been offered in evidence.

Mr. Fullerton—I know it has.

Mr. Evarts—No, but to repeat matter of evidence, for argumentative juxtaposition.

Mr. Fullerton—My friend on the other side made a great point in his case—

Mr. Evarts—That is argument.

Mr. Fullerton—I am glad you think so. I am arguing.

Mr. Evarts—What I object to is your reproducing proof.

Judge Neilson—The precise date is not given.

Mr. Fullerton—No, Sir.

Judge Neilson—The fact that it was published appears.

Mr. Fullerton—I want to know whether the Woodhull biography was published before or after theses notes.

Judge Neilson—That he may answer.

The Witness—I think it was before.

Q. How long? A. I don't remember the date; some time before.

Q. The notes were given in 1871, and given up in 1872. A. Was your question, when the notes were given?

Q. When the notes were given with reference to the publication of the Woodhull biography? A. The notes were given after the publication of the Woodhull biography.

Q. Do you remember how long after? A. I don't remember the date; I cannot recall it.

Judge Neilson—It appeared on the cross-examination, the notes were given up after that publication.

Mr. Fullerton—Yes, Sir; and it was argued that it was in consequence of it.

Mr. Morris—Whereas the fact is, they were not given. The notes had no inscription until after the publication of that.

Mr. Evarts—We will see; we object to arguing the matter as we go along.

Mr. Morris—You should not object much to arguing, for you are all the time at it.

Mr. Fullerton—It is suggested that I should ask you whether these notes were given up at the date of the Woodruff letter? A. My recollection is that they were.

Mr. Evarts—It is now four o'clock.

Mr. Beach—We had better go on a little longer. How will you be in the morning, Frank?

The Witness—I don't know, Sir.

Mr. Beach—[After consulting with witness.] Your Honor knows that Mr. Moulton has not been able to go to his residence this day, since he heard of his mother's death, and he tells me he would prefer to have as much of this afternoon as possible. I think he can arrange his affairs so as to be here in the morning at the usual hour.

Judge Neilson—Then we will adjourn.

The Court was then adjourned to 11 o'clock Wednesday.

## THIRTEENTH DAY'S PROCEEDINGS.

### THREE NEW WITNESSES CALLED.

TESTIMONY OF MRS. MARTHA A. BRADSHAW AND WM. F. WEST—FRANKLIN WOODRUFF CALLED.

Anticipations of the appearance of new witnesses and curiosity to know who they were to be as well as to hear what they had to say filled the court-room on Wednesday with the great crowd which on the first days of Mr. Moulton's testimony made the room uncomfortable. On no day has the crowd been greater or more attentive.

Mr. Moulton's ordeal as a witness ended at noon. Mr. Fullerton resigned him to the hands of the opposing counsel 15 minutes after the opening of the court, after having attempted only to gather a few fragmentary bits of testimony. The recross-examination was short, but it was also sharp. Mr. Tracy's questions were precise and delivered rapidly, and Mr. Moulton's replies were equally positive. Only when Mr. Tracy asked whether he (Mr. Tracy) knew what Mr. Moulton's statement to the Committee was to be before Mr. Moulton appeared before the Committee, "No," answered the witness; "but you knew what you wanted it to be." Gen. Tracy asked that the witness be admonished for thus replying, but Judge Neilson unhesitatingly refused, saying that the witness had been tried and tortured for nearly ten days by the counsel on both sides, and he should therefore be excused without any sort of reprimand. When Mr. Tracy asked Mr. Moulton for his views of the marriage relation, there was an evidence of merriment on the part of the audience in apparent anticipation of some singular views on the part of the witness. But he replied unhesitatingly in plain terms. Mr. Moulton was placed in the witness chair two weeks ago on Wednesday, at 2 p. m., and was under examination nearly 11 days, which amounts to saying that he was engaged for very nearly 44 hours in hearing questions and making replies.

The entrance of Mr. Morris by way of the door leading into the ante-room of the court a few moments before noon, with a strange lady at his side, caused marked sensation in the audience, which was manifested by the visible stretching of necks and audible whisperings. She was conducted to the witness chair, and gave her name in a low tone as Mrs. Martha A. Bradshaw. Mrs. Bradshaw is a pleasant-looking lady of about 45 years of age, very quiet and retiring in manner, and evidently felt the embarrassment of her position. She was dressed plainly in



black, and enveloped in a black cashmere shawl. According to her testimony, she has been a member of Plymouth Church and has known Mr. Beecher for 22 years, and has been acquainted with Mr. and Mrs. Tilton for nearly as long a time. Of the latter the witness had occasion to say that she was a most refined and sweet-minded woman, whom no one could know without loving. As she spoke these words, the voice of the witness, which had before been scarcely audible, sank to a whisper, and her eyes filled with tears. During her entire examination she sat almost immovable, with downcast and tearful eyes, but she gave her testimony clearly and without hesitation.

In the various statements and in the opening address of Mr. Morris, great stress was laid upon the evidence which Mrs. Bradshaw was expected to give, and it had been hinted that she would add important documentary testimony to the case in favor of Mr. Tilton. Her letter to Mr. Beecher proved to be one asking advice as to what she should do in reply to the summons of the Church Committee which was to try the "West charges" against Mr. Tilton for slandering Mr. Beecher, and asking him to deny Mr. Tilton's story to her, that she might mitigate what she would be compelled to tell the Committee. Throughout the letter there is no intimation that she believed Mr. Tilton's story or doubted Mr. Beecher's and Mrs. Tilton's innocence. Mr. Beecher's reply proved to be another of the many letters counseling silence as the best method of killing slanders.

Wm. F. West, formerly a deacon of Plymouth Church, and the person who made the charges against Theodore Tilton as a member of the church, was the first witness examined after recess. Mr. West is a mild looking gentleman of about 40 years. His examination was mainly regarding the manner of his placing his charges against Mr. Tilton before the church and regarding conversations with Mr. Beecher at which the latter, the witness said, tried to make him withdraw or postpone the charges.

Franklin B. Woodruff, the partner of Mr. Moulton, was called at half-past three o'clock, but after asking him a few formal questions the counsel became engaged in an exciting debate. While that discussion was in progress the hour of 4 arrived, and the Court adjourned.

#### THE PROCEEDINGS.

At the outset of the morning session on Wednesday, Judge Neilson called attention to what he deemed the unnecessarily prolix arguments of counsel over trivial points in the

case, and proposed a means of economizing time spent in this way. The re-direct examination was resumed, the questions being with a view to explaining away the suggestions of a black-mailing scheme made in the cross-examination.

#### THE ACCUSED NEVER DENIED HIS GUILT.

Francis D. Moulton was recalled and the re-direct examination continued.

Judge Neilson—I wish to say to the counsel on each side, before we proceed this morning, that on looking over the report of the proceedings I have been, as perhaps they have been, a little surprised to see how much time is spent on some minor and really unimportant points, and I think we might economize time, and it will suit me better, if the counsel would raise specifically, in clean cut terms, any objection they wish to make, and if it is one that I understand and desire to decide at once, to be content with an exception. If, on the other hand, it is a point that the counsel think is worth discussion, they will indicate that, and then it will be my wish to hear discussion on the subject. I think we might economize time in that way, gentlemen.

Mr. Evarts—If your Honor please, I observe in one of the morning papers some observations in regard to the painful position in which the witness was placed by the great and sudden affliction which overtook him yesterday, and which is made the occasion of some observations reflecting upon counsel, as if they had not appreciated that situation, and had, notwithstanding it, insisted upon prolonging the examination of the witness. Now, as your Honor understands, the Court and the counsel on both sides at once placed the matter wholly at the choice of the witness.

Judge Neilson—That is certainly so.

Mr. Evarts—And I am sure agrees with us in that statement; nor was there any basis for any such imputation.

Judge Neilson—None whatever. I am very sorry it was made.

Mr. Fullerton—And for reasons for which it is not necessary to state here, the witness thought advisable that he should go on and complete his cross-examination and re-direct, if it did not occupy too much time.

Judge Neilson—It was a question properly addressed to the witness, and if he felt the case burdensome, and that he ought to shake it off his hands, it was a question addressed to him.

Mr. Fullerton—Yes, Sir; I was pleased with the alacrity with which the counsel on the other side consented to take just such course as the witness desired. Shall I proceed, Sir?

Judge Neilson—Yes, Sir.

Mr. Fullerton—At the close of the sitting yesterday, Mr. Moulton, I was calling your attention to the article published in *The Golden Age*, embodying the letter of Mr. Tilton to Mr. Bowen of Jan. 1, 1871. You stated upon your cross-examination that the copy which was appended to the tripartite agreement was not exactly like the one which you had seen. I hand you now the paper and ask you whether that is the copy which you saw [handing witness a paper]? A. Yes, Sir; this is the copy that I saw.

Q. In what respect does it differ from the one attached to the

tripartite agreement? A. I indicated what these differences were, and specially also, Sir, that there were some differences in the print; and then, I think, the last clause here in writing by Oliver Johnson was not in the copy that was attached to the tripartite covenant. Is that the answer?

Q. That is it. I understand you to say then these words at the bottom of this proof, namely, "that being the case, this publication which is necessary to my own defense, can do him no injury," was not in the printed slip. A. That was my recollection, Sir, from it the other day when I was looking at it.

Q. These words are in the handwriting of Oliver Johnson, I understand you to say? A. Yes, Sir.

The paper shown to the witness is marked "Exhibit No. 64."

Q. You have been asked upon the cross-examination in reference to the publication of the letter to Mr. Bowen in connection with the payment of the \$5,000 by Mr. Beecher; I wish to ask you whether Mr. Beecher mentioned the publication of that letter in connection with the payment of the \$5,000, or in connection with whatever was said prior to the payment of the \$5,000? A. Never, Sir.

Q. That was not alluded to by him, as I understand you? A. No.

Q. Where did you get the notes which were produced and read in evidence yesterday, and the two letters accompanying them? A. From Mr. Theodore Tilton.

Q. They were not in your possession, were they? A. No, Sir.

Q. You have been asked with respect to Theodore Tilton's valedictory, and as to the time when you first saw it; what valedictory did you refer to? A. The valedictory of Theodore Tilton in *The Independent*—the valedictory as editor of *The Independent*.

Q. When he ceased to be editor and became the chief correspondent, was it? A. Contributor.

Q. It was not a valedictory after his connection with the two papers ceased at all, was it? A. No, Sir.

Q. I call your attention for a moment to the letter of Dec. 26, 1870, and ask you this question, whether you knew of the existence of that letter until after it had been sent? A. No, Sir.

Q. Your answer, then, that you disapproved of that letter, has reference to the knowledge that you derived from Mr. Tilton of its contents after it had been sent? A. Yes, Sir.

Q. You disapproved the sending of it. A. After it had been written; yes, Sir.

Q. And your disapproval was founded on the fact that Bowen did not father his own charges by signing the paper? A. I thought he ought to have signed the paper, Sir; that was my objection to it.

Q. There is but one other question, Mr. Moulton, and it is this: In any of the conversations to which your attention has been called upon your cross-examination by the other side with Mr. Beecher, or to which your attention was directed upon the direct examination, did Mr. Beecher ever deny to you his sexual intercourse with Mrs. Tilton? A. Never.

Mr. Fullerton—That is all.

## THE RE-CROSS-EXAMINATION.

The re-cross-examination was then begun by Mr. Tracy.

Q. Mr. Moulton, at the time the notes which have been introduced in evidence connected with *The Golden Age* were given, what proportion of the original subscription had been paid in? A. What proportion? I really don't recollect, Mr. Tracy. I think it was paid in the day that the notes were given, or about that time. Mr. Woodruff can tell you about that better than I can. I don't remember.

Q. What proportion of the subscription had been or was paid in on that day? A. On the day that the notes were given?

Q. Yes, Sir. A. My recollection does not serve me, Sir, on that point, I think. Perhaps the account—

Q. Don't you know how much your original subscription was? A. The original subscription was \$3,000.

Q. What? A. The original subscription was \$3,000.

Q. Now, how much of that had you paid at the time of receiving this note from Theodore Tilton? A. I don't remember precisely about it, Sir, but my impression is that the one half of that subscription was called for at the time the notes were given, and the notes were given in consequence of the payment of it. I won't be certain about it. I haven't anything to guide my memory about it.

Judge Neilson—The subscription that you paid, however, was \$1,500? A. \$1,500.

Mr. Tracy—And had all the other subscribers paid one half of their original subscription? A. My impression is that they had, Sir, at the time that the notes were given.

Q. They had made these subscriptions prior to the starting of the paper, had they not? A. Prior to the starting of the paper.

Q. Can you tell us the form of that original subscription; what were its terms? A. I cannot.

Q. Can't you tell anything about it? A. No. I don't remember. We subscribed \$3,000—I subscribed \$3,000 for *The Golden Age*.

Q. Now, can't you tell us anything about the terms of that subscription? A. Nothing but that I subscribed \$3,000 for *The Golden Age*.

Q. What was you to have in consideration of that subscription? A. I don't know that I was to have anything. I was to lose it.

Q. Were you to give Theodore Tilton \$3,000 in consideration of his starting *The Golden Age*? A. Well, I thought it was about as good as giving it; I didn't expect to get anything from it.

Q. I didn't ask you that; I only ask you what you agreed to do? A. I agreed to subscribe \$3,000 for *The Golden Age*.

Q. Yes, Sir; and what was you to have in consideration of that subscription? A. I don't think there was any agreement made as to what I was to have, Sir.

Q. Nothing at all? A. I don't think there was.

Q. No understanding about it? A. No, I don't think there was; not that I recollect.

Q. And was there not with the other subscribers so far as you know? A. I don't recollect. Mr. Woodruff conducted it



entirely, Mr. Tracy, and so he would be able to inform you; I cannot.

Q. Do you mean to say that the paper which started on this subscription in March, had run until the 15th of September without having any part of that subscription paid in? A. I think Theodore Tilton drew his own money up to that time. My impression is that he had money and he paid it out as long as it lasted. I think so.

Q. Now, don't you know, Mr. Moulton, that the agreement between yourself and the other subscribers and Theodore Tilton, at the time these notes were given, was that they were to pay one-half of their original subscription in consideration of being released from the other half and his giving them his notes for the one-half which they had paid in, payable on *The Golden Age* becoming a success? A. No, I don't think that was the agreement at the time the notes were given. That was quite subsequent to it.

Q. That was quite subsequent to it? A. I think it was; that is my recollection.

Q. When was that agreement made, then, if it was not made at the time of giving the notes? A. I think it was made in 1872, some time.

Q. What was the agreement in 1872; repeat it? A. Well, I can't repeat it, Sir.

Q. Can't you repeat the substance of it? A. That Theodore Tilton was to have the whole thing—not call for the balance of the subscription, and have the whole subscription as a gift to him, without any obligation to return it.

Q. Do you mean to say, then, that the liability of the original subscribers for the whole subscription continued until 1872, when these notes were surrendered? A. My impression is that it did, Sir.

Q. That is your explanation of it? A. Yes, Sir; that is my explanation of it.

Mr. Tracy—Then, how did it happen that in 1871 he gave his notes for one-half of the subscription instead of the whole of it? A. Because he only got one-half.

Q. Ah! he gave his notes then for the half put in? A. That is all he wanted—that is the amount of money that he wanted, if I recollect correctly; but Mr. Woodruff conducted the whole of that negotiation, and he will be able to tell you.

Q. Now, do you know anything about how much money Tilton received on that subscription at the time of giving these notes in 1871? A. At the time of giving?

Q. Yes? A. My impression is that he received the whole at the time of giving.

Q. You now mean to say that he received the whole? A. Received the whole \$1,500.

Q. Do you mean to say that he received it all prior to that time, or that he received it on that day? A. I said that I did not recollect a few moments ago; I haven't anything to guide my memory with regard to it.

Q. Do you mean to say now that you can't tell anything about that? A. My impression is that the money was paid on or about the day that the notes were given. Won't the account explain it, that you got?

Q. Now, do you know what he did with that money? A.

I think he put it on deposit with Woodruff & Robinson, and drew it; I think the account will show what time it was paid.

Q. Now, will you take that account with Woodruff & Robinson and point to his deposit on that day of one-half those monies, amounting to about \$8,000—one-half of them will be that? A. What is the date, September 20th?

Q. September 15th, 1871. A. Don't see it here, Sir.

Q. Is there any deposit on or about the 15th of September 1871, there? A. No; don't appear to be.

Q. Then what time from September 15th, is there a deposit at all on that account? A. On what account, on account of the paper?

Q. On account of Theodore Tilton; a deposit in that account. A. February 3d, \$500; February 13th, \$500; February 24th, 1871, \$500; March 4th, \$500; March 8th, \$1,500; May 1st, \$500, and November 15th, \$500.

Q. That is 1872, that last? A. No; November 15th, \$500; November 25th, twenty-five—

Q. Then there is no deposit in that account as I understand you, from March to November, 1871? A. Yes; there is a deposit from March to November, 1871.

Q. What is it? A. \$500.

Q. When? A. March 4th, \$500.

Q. I say from March to November there is no deposit in the account? A. Oh! yes; March 8th, \$1,500.

Judge Neilson—He means from the end of March; after March? A. Yes, Sir; there is.

Q. What is it? A. May 1st, \$500.

Q. Is there any other? A. To the first of November?

Q. Yes. A. No, Sir; the next one is November 15th.

Q. Now, what do you understand those deposits along in March and May of 1871, to be?

Mr. Fullerton—One moment, I think we must object, Sir.

Mr. Tracy—I don't press the question, Sir.

Mr. Fullerton—I did not object in the first instance, because I thought it would save time to let them ask the question, but your Honor perceives that is not in reply to anything on the subject.

Mr. Tracy—I submit it is directly in reply.

Judge Neilson—If there be any fact in connection with either of the depositions which you deem material, you may ask him.

Mr. Tracy—Well, I won't ask that question; I don't think it worth while taking up time about it. The account shows for itself.

#### HOW FAR TILTON VOUCHERED FOR WOODHULL.

Mr. Tracy—Now, you gave yesterday what purported to be the speech of Theodore Tilton, introducing Victoria C. Woodhull, at the Steinway Hall meeting? A. Yes, Sir.

Q. When had your attention been called to the words that Mr. Tilton used, subsequent to the making of the speech, prior to yesterday? A. They were called, Sir, to the words that he used in the speech on the night that he made the speech.

Q. I say after? A. And then after that they were called to it in the paper, and I had occasion then within almost every day, I guess, for a week afterwards to state Theodore Tilton's connection with that Steinway Hall meeting.

and had occasion to speak of his speech. I have not seen it from that time to this.

Q. From what time? A. Well, I should say from a fortnight after the speech.

Q. Until when? A. Until I was asked to produce it from memory, yesterday. I produced it from memory.

Q. Had you talked with Tilton on the subject of what he did? A. Have I talked with him?

Q. Had you prior to your testimony yesterday? A. Had I talked with him? I talked with him prior to that. Oh, yes, Sir; I talked with him prior to that.

Q. How long prior? A. About the time of the meeting.

Q. Well, recently? A. After that.

Q. Recently? A. No, Sir, not recently; no.

Q. Within three months? A. I talked with him, I think, day before yesterday; I dictated the speech to P. B. White at my house, and told Mr. Tilton that I had dictated it.

Q. Was Mr. Tilton present when you dictated it? A. No, Sir, he was not.

Q. I show you a copy of *The New-York World* of Nov. 21st. Will you look at what purports to be Mr. Tilton's speech, as reported in *The World*, and tell us whether it is correct or not [paper handed to witness]? A. It was either this or the report of *The Herald* next day that I saw. Have you got the report of *The Herald*?

Q. No, Sir; I have not. It is either that or a report in *The Herald* next day from which you read it? A. Yes, Sir.

Q. And to which you referred, I suppose, for the next two weeks from time to time. Now, what do you say? Is that report in *The New-York World* a correct report of Mr. Tilton's speech? A. It is something like it, as I remember it.

Q. Now, isn't it substantially like it, as you remember it? A. I think that there was something about freedom of speech, in his speech, Sir.

Q. You think there was? A. Yes.

Q. Well, I will read this speech to you, and ask you if this is not substantially the speech

Mr. Fullerton—One moment, he has read the speech himself and knows whether it is right or not.

Mr. Tracy—I have a right to ask him whether certain things did not occur there, and refresh his memory.

Judge Neilson—I don't think you can read it. You can ask him if it is substantially—and wherein it differs from his recollection.

Q. Now, does it differ, in your recollection, from Mr. Tilton's speech only in the fact that you see nothing here about freedom of speech? A. I think not; if you will let me have it, I will try to point out what I—[Paper handed back to witness] I don't remember, first, that he said that—"I was met at the door by a member of the Committee."

Q. You don't remember that? A. No.

Q. Will you say he did not say it? A. I don't recollect that he said it.

Q. Well, will you say he did not say that? A. How am I to say that? If you will—

Q. I don't know, Sir; I ask you; I am questioning you—not

you me. A. My impression is that he did not say it; I cannot— How can I—

Q. Do you mean by that, that that is your recollection? A. That is what I mean.

Q. Yes, Sir; I am content. A. My impression is, also, that this clause, "Now, as to her character, I know it and believe in it and vouch for it—" my recollection of that is that, "Now, as to her character, I think I know it and believe in it;" not "believe in it;" I don't remember "believe in it." I remember the word "vouch;" and I don't remember the hisses; and my memory with regard to the other is, "I would rather be —," "it may be that she is a fanatic; it may be I am a fool." My recollection of that is that he said "it may be that she is a fanatic and a fool." "But before high Heaven I would rather be both fanatic and fool in one than be such a coward as would deny to a woman the sacred right of free speech." My recollection of that was that, "to be such a coward as would refuse to ask from an audience for a woman the right of freedom of speech." "I desire to say that, five minutes ago, I did not expect to appear here;" I do not recollect that. "Allow me the privilege of saying that, with as much pride as ever prompted me to the performance of any act within fifteen or twenty years, I have the honor of introducing to you Victoria Woodhull, who will address you on the subject of social freedom." I don't remember his saying that: "Allow me the privilege of saying that, with as much pride as ever prompted me to the performance of any act within fifteen or twenty years."

Q. You mean to say that you qualify it by putting in fifteen or twenty years? A. No—"allow me the privilege of saying that, with as much pride as ever prompted me to the performance of any act within fifteen or twenty years—" my recollection of the fact is only that, "I have the honor of introducing to you Victoria Woodhull." Then, I don't remember, "who will address you on the subject of social freedom."

Q. You don't remember that clause? A. No, I don't remember that clause; I am giving you my recollection of it.

Q. Now, will you say that he did not say, "now, as to her character, I know it, and believe it, and vouch for it—" ? Will you swear that he did not use that language? A. My impression is, Sir, that he did not say "I believe in it"; I remember his saying "I know it," and I remember the word "vouch"—that I am giving from my recollection of it.

Q. Now, will you say that he did not close his speech by saying: "I have the honor of introducing to you Victoria C. Woodhull, who will address you upon the subject of social freedom?" A. I won't say that he did not say it; I say that I don't recollect that he said that.

Q. Well, that purports to be a stenographic report of his speech, doesn't it?

Mr. Beach—That I object to.

Q. Now, Mr. Moulton, that speech that you dictated to Mr. White, did he write down? A. Yes, Sir.

Q. Did you give it to him? A. Did I give it to him? No, I kept it.

Q. Kept it in your possession? A. I kept it; yes, Sir.



Q. Have you ever seen what purported to be a manuscript of Mr. Tilton's speech in his hands within a day or two? A. Never, Sir. There was a party present when I dictated it, Mr. Tracy.

Mr. Tracy—I didn't ask you that.

Judge Neilson—Well, it was proper, because otherwise he would leave us under the impression that Mr. White was the only person there, and presently it would appear as if it were a contradiction, when it appeared somebody else was there. Therefore, I think the suggestion was proper on the part of the witness.

The Witness—Yes, Sir, I thought it was proper.

Mr. Evarts—If your Honor please, as it was not an answer to any question, and as while cross-examining counsel has possession of the witness, they are entitled that he should say nothing that is not an answer to the question, although it is quite immaterial in this particular instance, yet —

Judge Neilson—I don't think that rule would exclude an innocent observation of that kind, which naturally might occur to any witness.

Mr. Evarts—I don't mean that it would call for reproach, but certainly it cannot be the interposition of evidence, at the will of the witness, whether it is important or unimportant, while he is under cross-examination.

Mr. Beach—I think it is proper for the witness, Sir, to relieve himself from misapprehension.

Judge Neilson—I think it was proper; at any rate, it was a very natural thing that any witness might do.

Mr. Evarts—That might be, we have made no animadversion upon it whatever.

#### MOULTON CONTRADICTS GEN. TRACY.

Q. You referred to an interview at the Fifth Avenue Hotel, where you say I was present and Gen. Butler? A. Yes, Sir.

Q. And you say that you did not present certain papers to the Committee because I requested you not to? A. Yes, Sir.

Q. Will you state what papers I requested you not to present? A. What papers you requested me not to present? You requested me not to make my statement.

Q. I will ask you this question. Was not the only papers that I requested you not to present, or spoke to you on the subject of not presenting to the Committee, or to the public, that was in your statement, the letter of Mrs. Hooker to her brother, Mr. John Hooker's letter to his wife, and Thomas K. Beecher's letter to his sister? A. No, Sir; they were not the only letters.

Q. They were not? A. No, Sir; they were not.

Q. Did I not on that occasion and on other occasions say to you, when speaking of those letters, that I did not see how any honorable man could make those letters public? A. No, Sir; you didn't.

Q. I never said that to you? A. No, Sir, you didn't.

Q. Did you not say to me, in answer to that, that those letters had been given to you by Mr. Beecher in connection with his case, and was not my reply that I didn't see how either you or Mr. Beecher could take the responsibility of making the private

letters written to him, and the private letter of a husband to his wife, and the private letter of a brother to his sister, public, without the consent of the writers? A. I don't recollect that you ever said anything of the kind, Mr. Tracy. It was not until the Saturday night previous that those letters were to go into the statement, the night before you saw Gen. Butler at the Fifth Avenue Hotel. They were not in the statement, therefore, the night before.

Q. I don't ask you what was in your statement, or what was out of it; I am asking what I said and what reply you made to me? A. Yes, Sir.

Q. Now, do you say that it was determined at the Fifth Avenue Hotel, that night, that you should not present your statement to the Committee? A. I say that it was determined —

Mr. Tracy—Please answer my question.

Mr. Beach—He is not bound to answer it yes or no.

The Witness—I cannot answer it, your Honor, yes or no, without an explanation.

Judge Neilson—Go on, I think he may answer it.

Mr. Tracy—What did your Honor say?

Judge Neilson—I think he may proceed.

Mr. Tracy—I ask him a direct question, which I submit admits of a direct answer, yes or no.

The Witness—I cannot answer it yes or no, without an explanation.

Judge Neilson—[To the witness.] That you have a right to give on your re-direct, and we will explain it afterwards.

Mr. Beach—This question calls for precise language, precise words, and the witness may answer the substance without giving the language which was then used as near as he remembers.

Judge Neilson—That is the general rule, no doubt, still [to the witness] let us see what your answer is.

The Witness—What is the question?

Mr. Tracy—Read the question, Mr. Stenographer.

THE TRIBUNE stenographer read the question.

The Witness—It was determined that there should be a consultation with reference to not presenting it at that time.

Q. And that consultation was had the next morning, was it not? A. Yes, Sir; the next day, and at my house.

Q. With people whom you brought there? A. Yes, Sir; with people whom I brought there.

Q. For the purpose of determining your action as to whether you should present your statement to the Committee, or not? A. For the purpose of finally determining it.

Q. Who was present then? A. William C. Kingsley, Franklin Woodruff, my father and my wife.

Q. I was absent? A. You were not there. You didn't come to the house until after the short statement was made.

Q. Was not the subject of what you were to state before the Committee that afternoon, there deliberated upon, and determined in that conversation? A. Yes, Sir; it was.

Q. So far as you know, do you know that I had any knowledge of what your action was to be that afternoon, whether in presenting or withholding that report, until you made your appearance in the presence of the Committee? A. I don't think

you knew what the final action was to be. You knew what you wanted it to be, though.

Mr. Tracy—I submit that is a remark—

Judge Neilson—Strike out that last clause. It was not called for in the reply to your question, Mr. Tracy.

Mr. Tracy—Ought it not to be accompanied with an admonition to the witness that he should not volunteer anything?

Judge Neilson—No, Sir, because he has been here six or eight or ten days burdened and tortured by both sides, therefore I shall not admonish him. [To the witness.] Answer the question simply the counsel has put.

Q. Did I ever ask you in the world to withhold from your statement or any statement of yours to the Committee any paper that Henry Ward Beecher had ever written to you on the subject? A. Yes, Sir.

Q. Was not my request or suggestion to you on the subject confined entirely to private papers of other people which had not been written by him? A. No, Sir.

Q. You said in answer to counsel yesterday that you were not in sympathy with Mrs. Woodhull's sentiments on the marriage relation. Do you mean by that that you do not agree with her on that subject? A. I don't think I agree with her on that subject; no, Sir.

Q. Will you state to us what your views are? A. Yes, Sir.

Q. On the subject of the marriage relation? A. I believe in fidelity to your wife and in your wife's fidelity to you, and if you are not faithful to your wife, that you do wrong, that you ought to be punished for it severely; and if your wife is not faithful to you she ought to be punished for it severely; that is as near as I can get at it.

Q. What is your belief on the subject of divorce? A. On the subject of divorce?

Mr. Tracy—I don't suppose that properly comes in.

The Witness—I have not reached a conclusion on that subject, the laws are so various in all the States, and there is so much to be said on that subject I really don't—

Q. Have you read *The Golden Age* on that subject? A. Have I ever read *The Golden Age* on that subject?

Q. Yes, Sir. A. I think I have; I don't know.

Q. Have you talked to Mr. Tilton on the subject of divorce? A. Yes, Sir.

Q. Do you and he agree in sentiment on the subject? A. I don't know that we do exactly. I don't know exactly what his sentiments are. He has not arrived at a conclusion, I guess, in regard to it yet.

Q. Did you ever read his article to Horace Greeley on the subject of divorce? A. I forget whether I ever did or not; I don't remember. If you will point it out to me perhaps I can tell you.

Q. Will you tell wherein you differ with Mr. Tilton on the subject of marriage and divorce?

Mr. Fullerton—He says he does not know Mr. Tilton's sentiments on that subject; therefore he cannot tell the difference between his own sentiments and those he don't know anything about.

The Witness—I could not state to you Mr. Tilton's sentiments. He is a rigid monogamist, that I know; too much so, I think.

Q. Have you not read *The Golden Age*, and what has appeared on that subject from Mr. Tilton from time to time? A. I don't think I read all of it. I don't read very much; I cannot; my eyes are not good enough.

Q. Did you read his article to Horace Greeley on that subject? A. I cannot say. If you let me look at it I can tell you. [To Mr. Beach.]—Is it right for me to look at it?

Mr. Beach—Yes, gain all the information you can.

The Witness—I read some portion of this, Sir, I think.

Mr. Tracy—You read some portion of that article? A. Yes, Sir, I think I did.

Mr. Tracy—Now, I read and ask you if you agree with this?

Mr. Fullerton—I object to it.

Mr. Evarts—Why?

Mr. Fullerton—Because it is improper.

Judge Neilson [to Mr. Tracy]—Let me hear your views about it, Mr. Tracy, how it is proper.

Mr. Tracy—He has said he did not sympathize with Mrs. Woodhull on the subject of divorce; he says he don't know fully what Mr. Tilton's views are on that subject, and he don't know whether he agrees with him or not. I desire to ask him whether that has not been the subject of conversation between himself and Tilton, and whether they do not agree in that particular.

Judge Neilson—Is that a re-examination?

Mr. Tracy—I think it is, your Honor. They introduced the evidence of what his sentiments were on the subject of marriage and divorce.

Judge Neilson—As to his sympathizing with that woman and her views?

Mr. Tracy—And he said he did not. We are showing he did.

Mr. Fullerton—Those are not her views.

Mr. Tracy—I don't know that.

Mr. Fullerton—Then, if you don't know that, you ought not to ask him.

Mr. Tracy—We will get at that.

Judge Neilson—I think I must rule it out, Mr. Tracy.

Mr. Tracy—I offer to read, for the purpose of taking an exception, and I offer to follow it by showing those are the views of Mr. Tilton and Mrs. Woodhull on the subject of marriage and divorce.

Judge Neilson—It is ruled out as not called for or proper as a re-cross-examination.

Mr. Tracy—We offer to show their views are identical—Mr. Tilton's, Mr. Moulton's and Mrs. Woodhull's—on the subject of marriage and divorce.

Mr. Beach—That is a broad and general offer which, of course, cannot be passed upon on that point.

Mr. Tracy—This is a part of that plan of proof.

Mr. Beach—The Judge says he cannot receive it.

Judge Neilson—I cannot receive it.

Mr. Tracy—Your Honor will note our exception

Q. Have you ever talked with gentlemen on the subject of free love or the marriage relation, or on the subject of social freedom? A. I talked with you once on it, I know.



Q. Did you ever talk with Mr. Armour or Stephen K. Lane on the subject?

Mr. Fullerton—I object to that.

Q. And in which you expressed your belief in the doctrine of free love as publicly understood?

Judge Neilson—Ruled out for the same reason, as immaterial.

Mr. Evarts—This is to contradict the witness. He has stated his views.

Judge Neilson—He has stated he did not sympathize with Mrs. Woodhull in her views on that subject.

Mr. Evarts—For all that, he has given his views, which are somewhat rigid.

Judge Neilson—On your cross-examination?

Mr. Evarts—I agree; and now we ask him if he has not said the opposite, and named witnesses, by whom we expect to contradict him.

Judge Neilson—It cannot be received.

Mr. Evarts—Your Honor will take our offer.

Judge Neilson—[To the stenographer.] Note the offer and exception.

Mr. Evarts—We offer to inquire of him concerning his statement to named witnesses at interviews with them, in which he has given his sentiments on the subject of free love, to the contrary of what he has now declared them on the stand, with a view of calling those witnesses to contradict him.

Judge Neilson—It is ruled out, Sir.

Q. You stated on your re-direct something about the number of people who conversed with you on the subject of the Woodhull scandal after its publication, and you said 15 or 20 a day. For how many days do you think that continued? A. I don't know. I should think, perhaps, a fortnight.

Q. Forty days? A. A fortnight.

Judge Neilson—He said that on his former examination; about two weeks, he said.

Mr. Tracy—That is all with this witness, your Honor.

### THE RE-RE-DIRECT EXAMINATION.

The re-re-direct examination was begun.

Mr. Fullerton—Your attention has been called to certain conversations between yourself and Mr. Tracy with regard to this matter, and you have been asked whether you did not say certain things. Now, I ask what you did say to Mr. Tracy on this occasion?

Mr. Tracy—That I object to. I have inquired of no interview that they did not go into.

Judge Neilson—Is that the point where it was suggested he should answer and explain afterwards?

Mr. Fullerton—Yes, Sir; that is strictly within your Honor's ruling yesterday on a similar objection. Of course, we are to presume that they are laying the foundation for an attempted contradiction; and while the witness denies having said certain things, we have a right to prove that he said certain other things.

Judge Neilson—Well, you may ask him that question, I think.

Q. What was said upon those occasions?

Judge Neilson—On the occasion pointed out by Mr. Tracy's question?

Mr. Tracy—They examined about that interview at the Fifth Avenue Hotel fully, and went into all they desired to go into about it; and he stated that he withheld these papers at my request. Now, I ask him simply if the only papers I asked him to withhold, or requested him to withhold, were not certain definite papers which I named. It is the only inquiry.

Judge Neilson—To that he says no.

Mr. Fullerton—Now, I wish to know the balance of the conversation.

Mr. Beach—That was not the only inquiry. Certainly counsel examined him as to the point whether or not the statement was settled on at that time, but not on any conversation—asked him in regard to the contents of the statement.

Mr. Tracy—At his own house, at which I was not present?

Mr. Fullerton—At the Fifth Avenue Hotel.

Mr. Tracy—A. No, Sir; except so far as I asked him. The only request I made to him was on the subject of certain definite papers?

Judge Neilson—That is my recollection now; and the question is whether they cannot ask him what he really said. I think they may.

Mr. Tracy—On the subject of this paper.

Judge Neilson—On the subject of this inquiry.

Mr. Tracy—Then it will be limited to the subject of this particular paper.

Judge Neilson—That particular occasion when he says you did not simply ask him to retain certain papers; the inquiry now is what he did say on that occasion.

Mr. Evarts—Your Honor will notice we do not introduce that conversation. We cross-examined only in reference to their previous examination of him, and only cross-examined on this particular point. That certainly does not give any right to resume the whole interview as we can see, nor do I understand your Honor so to rule.

Judge Neilson—I still think he may answer the question.

The Witness—What is the question?

(THE TRIBUNE stenographer read the question.)

Mr. Tracy—Confine yourself to the occasion inquired of. That is the occasion of the Fifth Avenue Hotel?

Mr. Fullerton—That is one of them.

Mr. Tracy—Let us take one conversation at a time, and see what reply we will get.

Mr. Fullerton—You are asking about what I know. We will get it out in our own way.

Mr. Tracy—I asked no question which called for that retort. This inquiry relates to the conversation at the hotel. Your Honor will note our exception to the admission of our interview.

The Witness—I said to Gen. Butler at that interview, "I have brought Mr. Tracy to you to determine with regard to this statement. Mr. Tracy has said to me he did not want me to make this statement; I want to do exactly that which is honorable in the premises. I wish you and Mr. Tracy would talk it over. Mr. Tracy sat down and talked it over with Mr. Butler,

and said to Gen. Butler, in my presence, that he thought the letters and documents of Mr. Beecher ought not to be produced in my statement; and that is the substance of the conversation as I remember it at that time; and when Gen. Tracy went away I saw Gen. Butler, and he said Gen. Tracy's idea was—"

Mr. Fullerton—You need not state what Mr. Butler said in Mr. Tracy's absence. Now, go to the occasion referred to by Mr. Tracy's examination of you.

Mr. Tracy—What was that occasion?

Judge Neilson—Where was that occasion?

The Witness—Mr. Tracy did not name it.

Mr. Beach—The occasion at Mr. Moulton's house, when Mr. Tracy inquired of him whether it was upon that occasion that the form of statement was finally agreed upon.

Judge Neilson—That was an occasion when he was not present.

Mr. Beach—That makes no difference. The witness says it was finally agreed upon. We want to know why it was agreed upon, and how it was agreed upon.

Judge Neilson—I think we must leave it as it is. Mr. Tracy was not present.

Mr. Fullerton—Do you recollect an interview in the back room when the Committee was sitting in Mr. Storrs's house, when you went to present your statement? A. I remember Mr. Tracy was there when I presented a statement.

Mr. Evarts—We object to that on the ground that it is not any part of our re-cross-examination.

Mr. Fullerton—Mr. Tracy asked the witness whether at any time before the statement was presented to the Committee he (Tracy) knew what the statement was to be.

Mr. Tracy—With his knowledge.

Mr. Fullerton—I know that, and what I now ask him is to try and draw his attention to an interview between him and Mr. Tracy at another place, in the back room where the Committee sat, at which time Mr. Moulton stated to Mr. Tracy what his statement was, and Mr. Tracy approved of it. That is a direct answer to the inquiry which was put by Mr. Tracy.

Mr. Evarts—Then we asked him a general question, and he answered it.

Mr. Beach—We try to show he is mistaken by calling his attention to an interview.

Mr. Evarts—And now they say, having asked him the general question and getting a general negative, that that gives him a right to go into all interviews and conversations that they may wish to explore to prove he has been incorrect in that statement. We don't go into that.

Mr. Tracy—The question stands in this way. The witness testified on his direct examination that it was determined at the Fifth Avenue Hotel, at my request, that his statement should be withheld. On his cross-examination he testified that it was determined at a conversation at his own house, at which I was not present, the ensuing day. Then I asked him the question whether he had any knowledge that I knew, prior to his appearance at Mr. Storrs's, before the Committee on that day, what his statement was to be, and he said he had no such knowledge.

The Witness (to Judge Neilson)—That is just the point on

which I wished to make an explanation in my answer, if your Honor please. It was not finally determined; Mr. Tracy did not know what the final determination was to be.

Mr. Beach—The witness has corrected that misstatement of Gen. Tracy. The point is just this: Mr. Tracy has extracted from this witness the answer that he (Tracy) did not know of the statement of Mr. Moulton until after or at the time he appeared before the Committee. We believe that that was a mistaken answer upon the part of the witness; and for the purpose of refreshing his recollection, and enabling him to correct that answer, we, in our re-direct examination, call his attention to an interview between him and Mr. Tracy, in which Mr. Tracy was informed of the very fact which, on cross-examination, the witness has mistakenly answered he did not know. Now, is there any rule—

Judge Neilson—That is a correction the witness has a right to make, of course.

Mr. Beach—Certainly.

Mr. Tracy—According to the question put, it is after his appearance before the Committee.

Mr. Beach—No, it is not.

Judge Neilson—Well, I think we will hear the correction.

Mr. Tracy—Your Honor will note my exception.

The Witness—I saw Mr. Tracy in the Committee room before I made the report to the Committee, and told him I had in my statement only presented the documents quoted by Theodore Tilton in his statement.

Q. What reply did he make to that?

Mr. Tracy—I object to that, your Honor.

Judge Neilson—That covers the point that Mr. Tracy didn't know.

Mr. Fullerton—His reply might indicate very clearly that he knew, and understood and comprehended it, and approbated it.

Judge Neilson—This indicates it clearly enough.

#### THE RE-RE-CROSS-EXAMINATION.

The re-re-cross-examination then took place.

Mr. Tracy—That was in the Committee room, you say? A. In the Committee room, I think; yes, Sir.

Q. And in the presence of the Committee? A. In the parlor. I forgot they knew it. When I say "the Committee room" I mean Mr. Storrs's house.

Q. In the parlor? A. They were in the back parlor, and I think you came out in the front parlor.

Q. Did you come into the room? A. I think so.

Q. Then you, for the first time, informed me what your report was to be? A. I think so; yes, Sir.

Q. That is your short statement, is it not, that you submitted to the Committee that day? A. The time at which I presented to the Committee the documents quoted by Theodore Tilton in the statement.

Q. What day of the month was that? A. I don't recollect the day of the month.

Q. It was your statement before the Committee, not what is known as your long statement? A. No, Sir; that was not made until after Mr. Beecher made his.



Q. Not either of your long statements? A. It was not either of my long statements.

Judge Neilson—It was not either of those papers you said Gen. Butler prepared? A. No, Sir; it was a modification of the first statement Gen. Butler prepared. The meeting in my house, I would like to explain, was in consequence of the meeting at the Fifth Avenue Hotel between Mr. Tracy and Gen. Butler and myself, and Gen. Butler told Mr. Tracy that there would be a conference at my house the next day, and promised that he would present the views of Mr. Tracy at the meeting next day at my house. Mr. Woodruff was in favor of making the report, and my wife was in favor of withholding it, and it was determined to withhold it.

Mr. Evarts—I move to strike that out.

Judge Neilson—I think not; that is explanation.

Mr. Evarts—This is every conversation between him and General Butler outside of the time Gen. Tracy was there.

Judge Neilson—They don't object to that, of course; it was understood the night before, there was to be conference next morning on this subject. The next morning there was a conference held. What General Butler said and what Mr. Woodruff said ought to be stricken out, of course.

Mr. Evarts—If your Honor will pardon me for being somewhat explicit here, I ask to strike out all that this witness has given not in response to any question, but which is a volunteer statement on the ground that it is not admissible evidence, especially from the fact of its not being drawn out by any question of ours. Now, the parties on the part of the plaintiff sought to introduce a conversation, or the witness sought to introduce before, a conversation between General Butler and himself when Gen. Tracy was not present, which was promptly rejected by my learned friend. I understand what he has now voluntarily said is exactly what he was going to say then.

Mr. Beach—I suggest to Mr. Evarts, Sir, that he is mistaken in regard to what the witness said concerning the declaration of Mr. Butler that there should be a consultation next morning. That was in the presence of Mr. Tracy.

The Witness—That is the point exactly.

Judge Neilson—The general statement is received by way of explanation, to show that the purpose of the night before was carried out, except that Mr. Tracy was not present.

The Witness—That is it exactly, Sir.

Judge Neilson—But the words on that occasion said by Mr. Woodruff and by Mr. Moulton are stricken out. Now, that is all by this witness, I understand.

Mr. Beach—Yes, Sir.

Judge Neilson—Mr. Moulton, you can retire.

Mr. Evarts—Your Honor will note our exception to the motion to strike it all out.

Judge Neilson—Yes, Sir.

## TESTIMONY OF MRS. MARTHA A. BRADSHAW

Martha E. Bradshaw, called and sworn on behalf of the plaintiff.

By Mr. Fullerton—Mrs. Bradshaw, where do you reside? A. 485 Henry-st.

Q. In this city? A. Yes, Sir.

Q. How long have you resided in Brooklyn? A. About 23 years.

Q. Please state your husband's name? A. Andrew Bradshaw.

Q. Is he engaged in business? A. Yes, Sir.

Q. Where, please? A. I think it is now in—

Q. In what city? A. In New York.

Q. Were you ever connected with Plymouth Church? A. Yes, Sir; I am still.

Q. As a communicant? Yes, Sir; my name is still on the roll on the book.

Mr. Evarts—If your Honor please, we have great difficulty in hearing the witness.

Judge Neilson—Yes, Sir; the lady must speak louder, and will, I hope.

Mr. Fullerton—There is a little disturbance in the room.

Judge Neilson—It is quite necessary that gentlemen should be very quiet, in order to enable the counsel to hear the witness, and the jury to hear the witness, which is the vital thing just now.

Q. How long have you been connected with Plymouth Church? A. I have attended there about 22 years, I think.

Q. How long a communicant of the church? A. Perhaps it was a year or two after I began to attend there before I united with the church. I cannot give the date exactly.

Judge Neilson—Which would make about twenty years?

Mr. Fullerton—That would be it, Sir. If they wish I will repeat the answers of the witness. "Perhaps it was a year or two after I began to attend."

The Witness—I think it was longer than that.

Q. About how much longer? A. I cannot tell exactly.

Q. And I understand you that your name is on the roll still? A. Yes, Sir.

Q. When did you last commune at the church?

Mr. Shearman—To that we object, if your Honor please. I don't see what that has to do with this case.

Judge Neilson—No, I don't see.

Mr. Fullerton—Very well; I will not put it then. [To the witness.] Were you connected with the Sunday-school of the church in any way? A. Yes, Sir; I am still.

Q. In what capacity? A. As teacher.

Q. And how long have you been a teacher of the Sunday school, or connected with that church? A. Eighteen years.

Q. Do you know Theodore Tilton? A. Yes, Sir.

Q. And Elizabeth R. Tilton, his wife? A. Yes, Sir.

Q. How long have you known them? A. About twenty years.

Q. Have the two families exchanged visits? A. Yes, Sir.

Q. What degree of intimacy existed between your family and that of Mr. Tilton? A. Mrs. Tilton, during that time, has been my most intimate friend.

Q. "Mrs. Tilton, during that time, has been my most intimate friend?"

Judge Neilson—You will continue that as far as it is agree-

able. Here is a request from some reporter that you will. As far as it is agreeable repeat the answers.

Mr. Fullerton—I will as long as it is agreeable to my learned adversaries.

Q. Were visits exchanged between the two families? A. Yes, Sir.

Q. How frequently? A. Very frequently. I have been there myself generally two or three times a week.

Q. And how often did Mrs. Tilton visit you? A. Not so often.

Q. How long did that intimacy and these friendly visits continue? A. They always have until within a very short time.

Q. Do you know Henry Ward Beecher? A. Yes, Sir.

Q. How long have you known him? A. About 23 years.

Q. Did you become intimately acquainted with him? A. No, Sir; not very intimately.

Q. Did he call at your house ever? A. He has occasionally.

Q. How frequently? A. Very seldom.

Q. Making friendly or pastoral visits? A. Social visits.

Q. And did you call at his house? A. I have been there many times.

Q. Many times? A. No, not many.

#### THE WEST CHARGES AGAINST TILTON.

Q. Do you know William F. West? A. Yes, Sir.

Q. Do you know the fact that he preferred charges against Theodore Tilton for having slandered Henry Ward Beecher?

Mr. Evarts—That we object to, if your Honor please, as an improper question. If there is any fact they wish to ask her about, any paper or document or anything, of course she is competent to speak concerning that identical thing. This description we object to.

Mr. Fullerton—I ask her if she knew the fact that such charges were made?

Judge Neilson—I think you should modify that question. Does she know the fact that the charges were made, without specifying what they are?

Mr. Fullerton—I will do it in that way. [To the witness]: Do you know the fact that charges were made by Mr. West against Mr. Tilton for slandered Henry Ward Beecher?

Mr. Evarts—No; that is the point that we object to.

Mr. Shearman—I desire that this witness should be instructed; this lady has probably never been on the witness stand before; that she should be instructed that she is to speak of her personal knowledge.

Judge Neilson—Yes, Sir.

Mr. Beach—It is an introductory question, as a foundation for a further question.

Judge Neilson—Yes; but the counsel desires you to omit the statement of the contents of the charges.

Mr. Fullerton—I know, Sir, but I am not disposed, unless I am instructed by the Court, to conform to that request.

Judge Neilson—All you want is the fact that she knows that charges were made by Mr. West.

Mr. Fullerton—And because I want to know it I ask the question.

Mr. Beach—Will the stenographer read the question?

THE TRIBUNE stenographer read the question as follows: "Do you know the fact that charges were made by Mr. West against Mr. Tilton for slandered Henry Ward Beecher?"

Judge Neilson—Now, if you will omit "for slandered Henry Ward Beecher" the question is allowed. Strike those words out.

Mr. Fullerton—If I had put the question, leaving those words out, my adversaries would have objected to it for good reason.

Judge Neilson—I don't know.

Mr. Evarts—You certainly give us good reasons now.

Mr. Beach—Well, Sir, we want—

Mr. Evarts—Let it pass.

Mr. Beach—No, Sir; I won't let it pass. We want to know whether the charges which Mr. West preferred against Mr. Tilton were connected with Mr. Beecher, for an introduction to the question to be presented to this lady, whether in consequence of those charges she had a communication with Mr. Beecher in relation to them.

Judge Neilson—Now, I assume that only one set of charges was preferred by Mr. West, and I think the learned counsel can learn whether she remembers or was aware that charges were presented by Mr. West. That opens the door for the subsequent interview between them without inquiring into the contents.

Mr. Fullerton—Did you ever see the charges, or what purported to be the charges, of Mr. West against Mr. Tilton? A. After they were made.

Q. Were you asked to be a witness? A. Yes, Sir.

Q. For the purpose of proving those charges?

Mr. Shearman—To that we object? It does not appear by whom she was asked.

Mr. Fullerton—No, it does not.

Judge Neilson—We will take the general fact. It goes to show that her attention was called to the subject. Will gentlemen be quiet, please?

Q. Would you recognize, do you think—

Mr. Beach—She has answered that.

THE TRIBUNE stenographer read the question and answer as follows:

Q. Were you asked to be a witness? A. Yes, Sir.

Q. For the purpose of proving those charges?

Q. Were you asked to be a witness for the purpose of proving those charges? A. Yes, Sir.

Q. Would you recognize the charges if you saw them? A. Yes, Sir.

Q. Look at the paper which I now hand you, and after reading it or glancing at it, say whether those are the charges which you saw? [Handing witness a paper.] A. Yes, Sir.

Mr. Evarts—We understand that that paper she saw.

Mr. Fullerton—No.

Mr. Evarts—Well, that is what we want to know.

Mr. Fullerton—I did not ask her that. This is "Exhibit 29."

Judge Neilson—You asked her if she recognized those as the charges.

Mr. Fullerton—Yes, Sir.



Judge Neilson—What does she say to that? I think she may answer that.

Mr. Fullerton—She has answered that; she says that she does recognize it as the charges.

Mr. Evarts—Unless they call her attention to the paper, and the answer has connection with the paper, I think it is objectionable. If this is the paper that she speaks of, then that is another matter.

Mr. Fullerton—I did not ask the lady whether this is the paper that she saw.

Mr. Evarts—Now, if your Honor please, you cannot hand the witness a paper that is not identified by the witness or anybody else, and refresh a witness's recollection by a strange paper and have her say: "Why, those are the charges, I remember." You have a right to ask her whether those charges, to wit, this very statement of them, she recognizes as having known of.

Judge Neilson—She recognized the statement?

Mr. Evarts—Yes, Sir.

Judge Neilson—The vital thing not being whether it is the same paper, or not?

Mr. Evarts—Well, that is the difficulty in the way of evidence.

Judge Neilson—We have been driven to that several times in the course of the case.

Mr. Evarts—That paper has not been identified in any way as ever having been seen by the witness before.

The Witness—[To Mr. Fullerton.] That is what I understood you to mean, Sir, what is there stated.

Mr. Fullerton—That is just what I asked you.

Mr. Evarts—This paper?

Mr. Fullerton—No; what is there stated.

Mr. Evarts—Don't animadvert upon me.

Mr. Fullerton—No; I am not animadverting upon you. I am emphasizing what the witness says.

Mr. Evarts—Emphasize to the Court and jury.

Judge Neilson—You except?

Mr. Evarts—We except, unless it is understood to apply to the paper itself.

Q. Now, Mrs. Bradshaw, after having seen those charges, and after having been requested to become a witness to prove them, did you have any communication with Mr. Beecher? A. Yes, Sir; I did.

Q. Was it a verbal communication, or by letter? A. By letter.

Q. Did you write to Mr. Beecher? A. I did, Sir.

#### BRISK TILTS BETWEEN COUNSEL.

Mr. Fullerton—Gentlemen, notice has been given to you, I believe, to produce that letter, and I now call upon you to produce it.

Mr. Evarts—The notice was given to us orally, here in Court, since the Court commenced.

Mr. Morris—Not orally—in writing.

Mr. Evarts—I beg your pardon. It was handed to us, and we have not had time to produce that paper.

Judge Neilson—The notice is too short unless it was covered by a prior notice—a former notice.

Mr. Shearman—No, your Honor, it was not.

Mr. Morris—We have been exchanging notices during the trial on both sides.

Judge Neilson—The notice is as good as to any paper here, although only made here.

Mr. Evarts—Exactly, as to anything we have it is good, but we have not had any opportunity to examine to see whether we have it.

Mr. Shearman—I will say to your Honor that if I had the paper with me, I think I should know it, and I should produce it immediately. I have not that paper here, and I have not had an opportunity to go to Mr. Beecher's house.

Judge Neilson—I assume that you have not had an opportunity.

Mr. Beach—I think an hour and a half is time enough to send to Mr. Beecher's house.

Mr. Evarts—To look for papers?

Mr. Beach—To look for papers. There is to be no grand examination for the purpose of finding this letter. Mr. Beecher could at once refer to it upon his files if he kept it.

Judge Neilson—Gentlemen, suppose you pass to some other topic. This would be a good notice at two o'clock.

Mr. Evarts—So we understand.

Mr. Fullerton—Did you preserve a copy of the letter which you sent to Mr. Beecher? A. Yes, Sir.

Q. Look at the paper now shown you and say whether it is the copy that you preserved? [handing witness a paper.] A. Yes, Sir.

Mr. Fullerton—Shall I read it in evidence or not, subject to having the original substituted?

Judge Neilson—No. Mark it for identification for the present, and hold it until two o'clock.

Mr. Evarts—Then we will make further answer on the subject of the search.

Mr. Shearman—Suppose you admit the printed copy.

Mr. Fullerton—No; you have established the precedent. Those things come home to roost very often.

Mr. Evarts—There is nothing here to roost about.

Mr. Fullerton—You are off of the roost.

Mr. Evarts—We want to look for this paper, and we have a perfect right to say so.

Mr. Fullerton—That is what we did say.

Mr. Evarts—No; you said something about coming home to roost.

Mr. Fullerton—We want to remind our adversaries that the word we now use is one of their own getting up.

Mr. Evarts—There is no difficulty at all.

Judge Neilson—No, Sir.

Mr. Beach—But the counsel referred to the goose and the gander, and it naturally reminds us of the roost, and we therefore say that.

Judge Neilson—The gentleman has been quoting Shakspeare and not choosing the best parts of it. [Laughter.]

Mr. Shearman—I will say that I only did that out of courtesy to the gentlemen on the other side, for the purpose of finding the paper, because the fact is that the description given me is

so vague that it is only by some intuition that I can ever find this letter at all.

Mr. Fullerton—I can give the date.

Mr. Shearman—I don't want it.

Mr. Fullerton—But you must have it. It is October 4, 1873.

Mr. Shearman—Their notice does not cover any such letter, your Honor, and it shows how a little courtesy on the part of counsel might be profitable to themselves.

Mr. Fullerton—Ah! that is a lesson you should have learned yesterday.

Mr. Beach—We fear the Greeks, Sir, bearing gifts.

Mr. Fullerton—If the notice is insufficient, we will remedy that by giving—

Mr. Beach—Well, they have got the notice now.

Mr. Evarts—Yes, we have got it now for the first time; we never had it before.

Judge Neilson—Yes, it is so understood.

Mr. Beach—What is the notice?

Mr. Morris—The notice is wrong as to the date, but it refers to the substance.

Mr. Shearman—How do we know but there may be a hundred letters of Mrs. Bradshaw?

Mr. Evarts—They have given a notice to produce a letter of a different date. They would have to correct that notice, which they now have done.

Mr. Fullerton—Their attention has been called to the substance of it. The date, under the circumstances, was very unimportant.

Judge Neilson—You can resume this branch of the subject at two o'clock, when they will probably produce the letter.

Mr. Fullerton—I cannot go any further with the witness.

Mr. Beach—Yes, we can put in the letter of Mr. Beecher, and we can put in the copy if they do not produce the original.

Mr. Fullerton—I don't want to put in the letter of Mr. Beecher first.

Judge Neilson—Could not you save time, gentlemen, by using the copy?

The Witness—It is an exact copy, and was written before the letter was sent.

Mr. Fullerton—Look at the paper now shown you, and say whether it is a reply of Mr. Beecher to the letter which you sent to him? [Handing witness a paper.] A. Yes, Sir.

Letter marked "Ex. 66 for identification."

### TILTON'S FAMILY ORDINARILY HAPPY.

Q. Now, Mrs. Bradshaw, you have told us that you were intimate in Mr. Tilton's family. I wish to ask you about the degree of affection which existed in that family between the husband and the wife, as manifested in their daily intercourse, when you were present? A. I always considered them an ordinarily happy family.

Q. "I always considered them an ordinarily happy family." Did I understand you correctly? A. Yes, Sir.

Mr. Evarts—An ordinarily happy family.

Mr. Fullerton—Yes, Sir. [To the witness.] And that judgment was based upon observation while you were there, was it? A. Yes, Sir.

Q. What was the general character and disposition of Mrs. Tilton in her family? A. Most delicate and refined and sweet-minded in every way. No one could know her and not love her.

Q. And up to what time was this degree of affection manifested, in this family, that you have spoken of? A. I never knew of any serious trouble until within three or four years—three years perhaps.

Mr. Fullerton—That is all with the witness.

Judge Neilson—Then you will resume with this witness at two o'clock?

Mr. Beach—No, Sir.

Mr. Fullerton—No, Sir, we are through with her.

Mr. Evarts—We will cross-examine her when the paper is produced.

Judge Neilson—Is this copy of the letter in by consent?

Mr. Beach—No, Sir; the copy of the letter is proven. If they produce the original and furnish it, we will introduce that with the reply; if not, we will introduce the copy. There is no occasion for the suspension of this cross-examination.

Judge Neilson—Then go on.

Mr. Fullerton—There is one other question I will ask. [To the witness.] Is that the envelope in which Mr. Beecher's letter to you was sent? [Handing witness an envelope.] A. Yes, Sir.

Marked "Ex. 63, for identification."

Mr. Evarts—If you will show us that letter we will see about it.

Mr. Fullerton—The copy?

Mr. Evarts—Yes, Sir.

### A NEW LETTER OF BEECHER'S, ADVISING SILENCE.

Mr. Evarts—If your Honor please, this copy, this lady gives a very trustworthy account of it—I mean in respect of accuracy; and we shall be able to correct it if there happens to be any discrepancy.

Mr. Beach—You consent then to our reading it, substituting it for the original?

Mr. Evarts—Yes, Sir; referring to the original if we find any occasion to do so.

Mr. Fullerton—I read first the letter of Mrs. Bradshaw:

BROOKLYN, October 4, 1873.

Mr. Beecher:

DEAR FRIEND: I want very much, if you are willing, to have a few words with you in regard to the statement which I, in good faith, consented to make before the Church Committee in your behalf and Elizabeth's, for I felt that my intimacy with her and my love for her and for you gave me a right to speak in her vindication. I could not and would not believe that you had been otherwise than basely calumniated. Now, Mr. and Mrs. Tilton come and warn me not to do it, if I value your welfare; and refer me to you for advice in the matter. I shall be governed entirely by what you say, for I would part with my right hand sooner than to destroy the love and confidence which is reposed in you all over the world. Will you see me for a few moments here or wherever you may appoint. Or, must I accept Theodore's awful story for truth. Do mitigate it, be it ever so little, if you can. Elizabeth has never made any confessions to me. God knows that I do not seek an interview from any motives of morbid curiosity;



the subject is too painful for that. Believe me, you have no sincerer friend than

M. A. BRADSHAW.

Please do not send a verbal answer by Mr. Halliday, to whom I intrust this note; because I do not wish to intrude at your house. Of course I do not wish to see you if you prefer otherwise; but send me a line in reply, if you do not come, that I may know what to do, for I cannot take the word of any other person in this matter.

M. A. B.

[Letter marked as read.]

I now read the reply of Mr. Beecher:

Confidential.

OCTOBER 7, 1873.

MY DEAR FRIEND: I thank you for your cordial and sympathizing note, and accept your expressions of confidence and affection; and I need not say to you how sincerely I reciprocate them. In regard to the matter of which you speak, let me say frankly that I think you will do the greatest good to all parties concerned by pursuing the course which I have done from the first, namely, refusing to allow the public to meddle with domestic and private affairs. It is impossible ever to bring domestic matters, complicated by elements which cannot be stated or understood, and without which all explanations will be barren, into public without doing a deal more harm than good. To be let absolutely alone is the sure and safe remedy; and, in this case, whatever difficulties have arisen have been amicably adjusted by those most deeply concerned. I know very well that the impulse of affection leads a generous nature to wish to fly to a friend's succor; and I am sure that you would not spare yourself any pains to help those who need you. But, happily, the best help you can give is to continue to love and trust those whom you have always trusted, and to refuse to have any hand in giving mischievous publicity to private affairs, even by allowing them to be discussed in your presence.

With sincere affection, old and new, I remain,

Very truly yours, HENRY WARD BEECHER.

MRS. MATTIE BRADSHAW.

The envelope is addressed: "Mrs. M. A. Bradshaw, 485 Henry-st., Brooklyn."

[Letter and envelope marked as read].

Mr. Fullerton—I will ask you this further question: Did you appear before the Committee to give evidence? A. No, Sir.

#### CROSS-EXAMINATION OF MRS. BRADSHAW.

The cross-examination was then begun.

Mr. Shearman—With reference to this paper, designated as Mr. West's charges, did you ever see that precise paper that was shown you by the counsel? A. No, Sir.

Q. Did you ever see any paper of that kind—a paper of that kind? A. No, Sir; I think not.

Q. No? A. I think after he had made his charges, he read them to me to see if he had them correct.

Q. Mr. West read you something?

Mr. Fullerton—No, no; not something; he read his charges?

Q. About what time did he read those charges to you? A. I cannot recollect, Sir, exactly.

Q. Did he ever read them to you before Sept., '73? I mean the charges as stated in that paper. You will be kind enough to let her look at that paper. [Paper handed to witness.] A. I don't recollect the time exactly.

Q. Will you look at that paper and refresh your memory, and say whether you cannot tell us, certainly, that you never saw or heard those charges before September or October, 1873?

A. I don't recollect the time when the matter was under consideration before the Church; that is, what month it was.

Q. How near was it to the time of your writing that letter that you first heard Mr. West read these charges that are in that paper? A. Within a very short time.

Q. That letter was dated the 4th of October, I believe? A. Yes, Sir.

Q. 1873? Were these charges read to you or brought to your notice by Mr. West, these precise charges I mean, before or after you wrote your letter of Oct. 4th, 1873? A. Before that.

Q. And very shortly before? A. Yes, Sir; I should say so.

Q. I understood you to say that Mr. and Mrs. Tilton's family were an ordinarily happy family until three or four years; can't you fix the date any more definitely than that, Mrs. Bradshaw? A. I never knew of any serious unhappiness until after Mrs. Woodhull's publication.

Q. That was in November, 1872? A. Whenever it was.

Q. You have said that Mrs. Tilton was a delicate, refined and sweet minded lady; was she not also a devoted wife and mother? A. Yes, Sir, eminently.

Q. Eminently so. Did you see any change in Mrs. Tilton's demeanor to her husband, any change in her manifestations of affection and devotion down to the period you have named, 1872? A. No, Sir.

Q. Was she not just as devoted a wife and mother during the years 1869, 1870 and 1871 as you had ever known her to be before? A. Yes, Sir.

Q. Did you not frequently converse with Mrs. Tilton about her husband, I mean with reference to her feelings toward him, in '69 and '70? A. Yes, Sir, or rather she did with me.

Q. Did she not uniformly manifest affection and devotion toward her husband in those two years? A. What two years.

Q. 1869 and '70? A. So far as I remember.

Q. How was it in the year 1868, especially in the Fall, the latter part of 1868? A. I have no special remembrance of that time.

Q. There was nothing noticeable or distinguishable from the general course, between Mr. and Mrs. Tilton, down to the period you have named in 1872? A. No, Sir.

Q. Were you acquainted with the religious views of Mr. and Mrs. Tilton during these years? A. Yes, Sir.

Q. Did you know of any change taking place in the mind of Mr. Tilton in respect to religious subjects? A. Yes, Sir. His wife has very frequently spoken to me of that.

Mr. Shearman—That I did not ask. If you object to that about the wife—

Mr. Evarts—We do not call for Mrs. Tilton's statements.

Mr. Beach—Well, that will be struck out then.

Mr. Shearman—Yes.

Mr. Shearman—You have said that you knew of no serious troubles between them, but did you know of any trouble or difficulty growing up between them on account of difference in religious opinions?

Mr. Beach—Well, do you call for that from the declarations of Mrs. Tilton?

Mr. Evarts—In just the same sense in which you have called for what she observed in that family. She said she knew of no

serious troubles up to a certain time. Now, we ask her if she did know of troubles growing out of the discord in religious opinions between Mr. and Mrs. Tilton.

Mr. Fullerton—We do not ask for what Mrs. Tilton said.

Mr. Evarts—It is the same kind of evidence—the observations she has noticed.

Mr. Beach—Ah! If she gives the declaration of Mrs. Tilton—

Mr. Shearman—Well, we didn't ask for the declarations of Mrs. Tilton.

Mr. Beach—That is just what we asked you. Mr. Evarts refused to answer and you do answer.

Judge Neilson—[To Witness.] You understand that in answering you will speak from your general knowledge, and not from what Mrs. Tilton told you. Now, stenographer, read the question.

[Question read by TRIBUNE stenographer.]

A. No trouble or difficulty, only it made her unhappy.

Q. Mrs. Tilton was an eminently religious woman, wasn't she? A. She was, Sir.

Q. Did you ever meet Mr. Beecher at Mrs. Tilton's house? A. Yes, Sir.

Q. Frequently? A. No, Sir.

Q. Did you see him in company with Mrs. Tilton either there or elsewhere frequently? A. No, Sir.

Q. But did you see them together sometimes? A. Very seldom.

Q. What was their demeanor and conduct toward each other when you did see them together? I don't ask what they said, but their demeanor and conduct, was it—

Mr. Fullerton—No, no.

Judge Neilson—He means apparent.

Q. I mean was it proper and decorous, as you observed it? A. Yes, Sir; eminently so.

Mr. Evarts—It might be judicious, both for this witness and any other who may not be able to speak so as to be heard by the jury, that the stenographer himself, when he has written the answer, should read it. Then we should all know what it was. It might save the time of the counsel, too.

Mr. Fullerton—You have, in reply to a question put to you by counsel upon the other side, touching the difference in religious sentiment between Mr. and Mrs. Tilton, observe that it only made Mrs. Tilton unhappy. Did you learn that from what Mrs. Tilton said, or any other way? A. Yes, Sir; from what she said.

Q. You learned it altogether that way, did you not? A. Yes, Sir; I don't remember any other.

This closed the examination of the witness, and the Court took a recess till two o'clock.

Mr. Shearman—If your Honor please, I desire to say that during the recess I made some examination for the letter, but without success; I have no doubt that we will be able to find it, and if we do, to-morrow morning I will be able to present it to your Honor.

Mr. Fullerton—Now, shall I proceed?

Judge Neilson—Yes, Sir.

TESTIMONY OF MR. WILLIAM F. WEST.

William F. West called by the plaintiff and sworn.

Mr. Fullerton—Where do you reside, Mr. West? A. 175 Madison street, in this city.

Q. Where do you carry on business? A. I am cashier for a banking-house in New-York.

Q. Were you ever in any way connected with Plymouth Church? A. Yes, Sir, I was a member of Plymouth Church, and am yet.

Q. When did your membership commence? A. Some eight or nine years ago.

Q. Have you ever been an officer in the church? A. I have, Sir.

Q. What office did you hold? A. I was a member of the Examining Committee for two years, and a deacon of the church for three years.

Q. During what period were you a member of the Examining Committee? A. From 1868 to 1870, I think, Sir.

Q. During what period were you a deacon in the church? A. From 1870 to 1873.

Q. Then you ceased to be a deacon? A. Yes, Sir.

Q. I want to call your attention to what occurred in the Autumn of 1871, after the publication of what is known as the Woodhull biography—if there was any action taken in regard to that matter, and, if so, what was it?

Mr. Evarts—Action by whom?

Mr. Fullerton—I will ask a leading question, if you prefer it.

Mr. Evarts—No.

Mr. Fullerton—It will not introduce any paper.

Mr. Evarts—I have no doubt you think it proper, but we object.

Mr. Fullerton—I withdraw the question.

Mr. Fullerton—What occurred between you and Mr. Beecher, if anything, in reference to the Woodhull biography? A. Mr. Beecher made a request of the Examining Committee, of which I was then a member, that he should be appointed as a Committee of one to confer with Mr. Tilton with regard to it.

Q. What action was taken in pursuance of that request? A. Mr. Beecher reported—

Q. No, what action was taken? A. The Examining Committee appointed Mr. Beecher such a Committee.

Q. Were any instructions given to the Committee after he was appointed, and, if so, what were they?

Mr. Evarts—That is objected to; it is only Mr. Beecher's relation to the subject, we take it, that we are concerned with.

Mr. Fullerton—I suppose we may show what instructions were given by the Examining Committee to Mr. Beecher, as a matter of course.

Mr. Evarts—Were they in writing?

Mr. Fullerton—Were they in writing? A. No, Sir, not that I know of; the Committee requested him to report as soon as possible.

Q. Was the object of appointing a Committee stated at the time of the appointment? A. It was; the Committee was to confer with Mr. Tilton with reference to the severance of his



relations with the church. It was thought by the Committee—

Mr. Evarts—No matter what.

Mr. Fullerton—If it was expressed at the time, state it?

The Witness—It was expressed at the meeting of the Committee.

Mr. Evarts—To Mr. Beecher?

The Witness—I don't remember whether Mr. Beecher was present.

Mr. Fullerton—State what occurred in Mr. Beecher's presence in that regard? A. The action which occurred in Mr. Beecher's presence was at a subsequent meeting, when Mr. Beecher made his report. Mr. Beecher reported to the Committee.

Mr. Evarts—Is that in writing? A. No, not that I remember; I think not.

Mr. Fullerton—Go on.

The Witness—Mr. Beecher reported to the Committee that he had seen Mr. Tilton; that he was in a very critical position. I am not repeating Mr. Beecher's words, now. I took no memorandum of that at the time; I am simply giving from memory the substance of the report; if there is anything incorrect with reference to it, the books of the Committee will show where my memory fails me. Mr. Beecher reported that he had seen Mr. Tilton; that Mr. Tilton at that time was in a very critical position; that he had many troubles, pecuniary and otherwise; that he had been surrounded by bad influences, and that he thought it would be better to leave Mr. Tilton to the influence of his friends, and for the church to take no action, or for the Committee, rather, to take no action with reference to severing his relations with the church. That report was adopted and no action taken.

Q. No action taken? A. No, Sir.

Q. Now, was any action taken subsequent to that by the church, through its proper officers, in reference to Mr. Tilton?

Mr. Evarts—Well, in regard to Mr. Beecher, we will insist upon his connection.

Mr. Fullerton—You can answer. A. Yes, Sir.

Q. When? A. In November, 1872, I think.

Q. After what event? A. After the publication of Mrs. Woodhull's statement.

Q. Was it known as the Woodhull scandal? A. Yes, Sir.

Q. What was done after that in reference to Mr. Beecher?

A. Mr. Beecher sent a request, or at least Mr. Halliday so stated to the Committee.

Mr. Evarts—We object.

Mr. Fullerton—Did you confer with Mr. Beecher afterwards in reference to it? A. I did confer with Mr. Beecher afterwards.

Q. In reference to this communication from Mr. Halliday? A. Yes, Sir.

Mr. Evarts—Whatever the conference was with Mr. Beecher, that we are entitled to.

Mr. Fullerton—That is just what I ask for.

The Witness—Mr. Halliday stated to the deacons of the church, at a deacons' meeting—

Mr. Evarts—That we object to.

Judge Neilson—Ask what passed with Mr. Beecher.

Mr. Fullerton—If he had a conversation with Mr. Beecher subsequent to that, in which this was repeated, is not that brought within your Honor's ruling?

Judge Neilson—Do you expect to show that?

Mr. Fullerton—The witness has so stated to me.

Mr. Evarts—This very question your Honor has disposed of. The short way is to show what occurred with Mr. Beecher; and if that requires anything antecedent to explain it, it will be time enough to take that up.

Mr. Fullerton—You think the shorter way is to go all round?

Mr. Evarts—We want to proceed in the correct way.

Mr. Fullerton—What did you say to Mr. Beecher in reference to what Halliday had communicated to the Committee? A. I called upon Mr. Beecher at his house; I cannot fix the date exactly; it was in November—the early part of November, 1872—and informed him that he had been appointed by the Examining Committee a member of a Sub-Committee, to confer with Mr. Tilton in regard to his position in relation to the Woodhull scandal.

Q. Did you tell him at whose request the Committee was appointed? A. This Committee was appointed on my motion.

Q. Did you tell him so? A. I told Mr. Beecher so.

Q. What was Mr. Beecher's reply to that information? A. Mr. Beecher told me that he thought it would be better to meet this whole scandal by silence—to make no effort to investigate it; and I replied to him that I thought that was a mistaken policy; that the church was suffering very much from the scandal; that I thought that the only way to meet the scandal was to strike it down and utterly destroy it. I told him that Mr. Tilton was a member of the church, as I understood it; that he was named by Mrs. Woodhull as her authority for the scandal; that I thought Mr. Tilton should be called upon to explain his position in the matter. Mr. Beecher replied that there was some force in what I said, and he said that he would meet with the Committee, but he was very busy at that time; that it would be two or three weeks before he could find time to meet with the Committee. I replied to that that the church was suffering very much, that I thought a meeting should be held at once. We were interrupted at that stage of the conversation and went to the other room. This conversation had taken place in Mr. Beecher's study. We then went into the front parlor, and Mr. Beecher resumed the conversation there by saying that this whole story rested solely upon the assertions of two prostitutes; that if he should pay any attention to it, that no prominent man in the country would be safe from their attacks; but he said that if any person of responsibility would make such an attack upon him, that I would see how quickly he would reply to it. I told him that it seemed to me that Mr. Tilton was a responsible person; that he was named as the author—the originator of the scandal; that I thought it was his duty to deny the assertions made by Mrs. Woodhull; and if he did not do that, that the Church should take the matter up; and if he did not explain his position satisfactorily, that he should be dismissed from the Church; and as the result of this conversation, Mr. Beecher named a day when he would meet with the Committee at his house, some two weeks after that time.

Q. Did he meet the Committee? A. He did meet with the Committee; and the Committee met at his house, either the latter part of November or the early part of December, 1872.

Q. What occurred at that meeting? A. Mr. Beecher told the Committee that he had seen Theodore with regard to this matter; that Theodore had expressed to him his great grief and sorrow at the publication by Mrs. Woodhull, and had offered to do anything in his power to neutralize the effect of it. He spoke of the friendship which existed between Mr. Tilton and himself; and said that he did not think Mr. Tilton had intentionally done anything to injure him; that he thought Mr. Tilton would in a short time—before the first of January succeeding—publish in *The Golden Age* a card, in which he would denounce Mrs. Woodhull, and in which he would deny the truth of her story; and he advised that the Committee should take no action; that they should await the publication of the card. The Committee decided to do this—that is, to recommend such action to the Examining Committee; but also to recommend at the same time that this sub-committee should be continued, in order that if Mr. Tilton did not publish such a card, he might be waited upon by the Committee afterwards.

Q. Was such a card published? A. Not to my knowledge.

Q. Then what action followed on the part of the Committee because of the non-publication of the card? A. No action was taken to my knowledge.

Q. What next occurred in reference to this matter in which Mr. Beecher participated? A. The next interview I had with Mr. Beecher with reference to the matter, as I remember, was on the night that I laid the charges before the Examining Committee against Mr. Tilton.

#### BEECHER'S POSITION TOWARDS THE WEST CHARGES.

Q. That is what I want to call your attention to. Now, state the history of that, if you please? A. I made charges before the Examining Committee on the night of the 27th of June, 1873—Friday night.

Q. Charges against whom? A. Against Theodore Tilton.

Mr. Evarts—In writing? A. In writing.

Mr. Fullerton—Were they laid before the Committee? A. They were laid before the Committee.

Q. And left with the Committee? A. No; I think not. They were returned to me to be amended, the first time I laid them before the Committee.

Q. Did you amend them? A. I did.

Q. Did you lay the amended charges before the Committee? A. I did.

Q. When were the amended charges put before the Committee? A. On the evening of the first of July, if I remember correctly.

Q. 1873? A. 1873.

Q. Did you leave these charges with the Committee? A. I did; they were accepted by the Committee at the time, and the Clerk was instructed to forward them to Mr. Tilton.

Mr. Fullerton—I call for those charges, under our notice.

Mr. Evarts—You must subpoena the Clerk to bring them.

Mr. Morris—We have subpoenaed him. Mr. Shearman said that we should have them.

Mr. Shearman—The gentleman is in attendance with the papers.

Mr. Fullerton—But you do not produce them on my call.

Mr. Evarts—You have no right to call upon us for papers not in our possession. The clerk is here.

Mr. Beach—We ask the clerk to hand the papers over to us—these charges. It seems to me that it is but a mere form to pass them over through the counsel.

Mr. Fullerton—Before the papers are produced, you may state the interview that you had with Mr. Beecher before laying the amended charges before the Committee? A. I wrote to Mr. Beecher on the twenty-fifth of June, I think it was, stating to him—

Mr. Evarts—No matter what—you wrote a letter.

The Witness—Excuse me.

Mr. Fullerton—That letter is in evidence.

Mr. Evarts—And it speaks for itself.

Mr. Fullerton—Yes, it speaks for itself.

Q. Were you here when your letter was read in evidence? A. I was not.

Q. Look at the paper now shown you, and state whether that is the letter you wrote to Mr. Beecher? I show you "Exhibit 53," already in evidence. A. It is, Sir.

Q. How soon after sending that letter to Mr. Beecher, if at all, did you see him? A. I saw him on Friday evening, the 27th of June.

Q. Where? A. At the lecture room of Plymouth Church.

Q. What occurred between you and him at that time? A. The Examining Committee had just left the lecture room in order to receive my charges.

Mr. Evarts—Never mind that.

The Witness—I speak of that, because our conversation referred to it, and Mr. Beecher came towards me, and told me he had received my letter; that he was glad to hear from me, and he thought I was taking the right course; but he said, "This is not a good time to bring this matter before the church; many members of the church are going into the country soon, and it will be better to postpone the matter, but if you will put it off until the Fall I will then unite with you in having a thorough investigation." I told Mr. Beecher I was opposed to any delay in the matter; that I felt action ought to be taken at once; that the scandal was doing great damage to the church, and that I should proceed in the matter at once—"use every effort in my power." I think these were the words that I used—to bring this matter to an issue with Mr. Tilton. Mr. Beecher said to me, "If you do that, Sir, you will act contrary to my wishes." Our conversation was interrupted at that time by Captain Charles Duncan, who came to the door and said that the Examining Committee wished to see us.

Q. Whom did he address? A. He addressed Mr. Beecher and myself; Mr. Beecher said "to see whom?" Captain Duncan said, "Yourself and Brother West." Mr. Beecher replied, "I have nothing to say to the Committee." Captain Duncan said, "Brother West had a matter to lay before them."



Mr. Beecher then again turned to me and said "Brother West knows very well what my wishes in this matter are." I told Mr. Beecher I was sorry to act contrary to his wishes, but I was compelled to do it by a sense of duty. I followed Capt. Duncan, and went into the vestry room.

Q. When Mr. Beecher made his last remark to you, what was his tone and manner? A. His tone was angry and threatening.

Q. You have stated you went up-stairs before the Committee? A. I did.

Q. Did Mr. Beecher go with you? A. He did not.

Q. Did you lay the charges before the Committee when you went up there? A. I did.

Q. And are these the charges you placed before them? [Handing paper to witness]. A. These are not the charges I placed before them on that evening; these are the amended charges.

Q. Where are the charges you laid before the Committee first that evening? A. I have them in my pocket, I think.

Q. Then produce them, if you please. [Paper shown witness.] I ask you to take a pencil, and mark in red, the charges that were placed before the Committee that evening? A. Do you mean to write in the margin?

Q. No; encircle the part as read—surround it.

The witness does so.

Q. Having marked that part of this paper in red, I ask you when the balance of it was added? A. It was not added; the remainder of the paper contains charges against another person.

Judge Neilson—In connection with Mr. Tilton? A. Not in connection with Mr. Tilton.

Mr. Fullerton—What knowledge had Mr. Beecher of these charges that you have thus marked in the paper before you presented them to the Committee? A. I told Mr. Beecher that I intended to lay the charges before the Committee, and I told him the substance of the charges.

Mr. Fullerton—I now offer them in evidence.

Mr. Evarts—He did not read them.

The Witness—He did not read all of them.

Mr. Fullerton—I now read this paper:

BROOKLYN, June 27, 1873.

*To the Examining Committee of Plymouth Church, Brooklyn:*

DEAR BRETHREN: Impelled by a sense of duty as a member of this Church, I hereby make before you the following charges and requests:

1st. I charge Theodore Tilton, a member of this church, with having at various times and to different persons, accused the pastor of this Church of conduct derogatory to his christian integrity, and injurious to the reputation of this church, and I request that the said Theodore Tilton be summoned to appear before this Committee, and, in case of failure on his part to retract said accusations or to prove them to be true, to show cause why he should not be expelled from membership with this church.

I name as witnesses who will testify in support of the above charge: Rev. E. L. L. Taylor, D. D., at No. 150 Nassau street, New-York; Rev. J. L. Hodge, D. D., No. 66 Harrison Place, Brooklyn; Rev. — Fulton, D. D.; and Andrew Bradshaw, No. 485 Henry street.

Paper marked "Exhibit 67."

Q. Were these charges afterwards amended? A. They were;

the Committee returned them to me and requested me to amend them by adding specifications.

Q. Look at the paper now shown you and say whether it contains the amended charges? A. It does down to a certain point.

Mr. Shearman—Indicate with a pencil mark. Please indicate it by a mark [showing witness paper]? A. That is not the whole of the charges they finally accepted; there are two specifications there only.

Q. These are not the charges finally accepted by the Committee? A. These were accepted at the time; the third specification was afterwards added and accepted.

Q. Was afterwards added? A. Yes, Sir.

Mr. Fullerton—I now put them in evidence.

Mr. Evarts—It is not shown that Mr. Beecher saw this.

Mr. Fullerton [showing paper to witness]—Is this the third specification? A. It is.

Mr. Shearman—But that was not put in at the time? A. No, Sir.

Mr. Shearman—Not for months afterwards?

Mr. Fullerton—Never mind, Mr. Shearman.

Mr. Beach—Our object is to ascertain what was finally accepted by the Committee—as finally pending before the Committee. That is all that is important.

Mr. Fullerton—Now, Mr. West, what knowledge had Mr. Beecher of these amended charges—the third specification? A. The same knowledge that he had of those that were made the evening before.

Q. State, if you please, what happened? A. I told Mr. Beecher the substance of the charges.

Q. As they are contained in these amended charges? A. In these amended charges—not with the third specification.

Q. Without the third specification? A. Yes Sir.

Mr. Evarts—We apprehend that does not entitle them to read these charges. The witness says he stated the substance of the charges. The mere fact of stating them to Mr. Beecher would not entitle the reading of this paper. He has given no conversation concerning them on the part of Mr. Beecher which shows that he had any knowledge of what these charges were. And here was a written paper. He puts it before us that he told Mr. Beecher the substance of it, and that leaves a large region of uncertainty whether the whole paper was brought to the attention of Mr. Beecher.

Judge Neilson—I will admit it.

Mr. Evarts—We except.

Mr. Fullerton—[Reading:]

BROOKLYN, July 1st, 1873.

*To the Examining Committee of Plymouth Church, Brooklyn, N. Y.:*

DEAR BRETHREN: It must be well known to you that a great and terrible scandal has for some time past been publicly proclaimed, to the great injury of the good name of our beloved pastor, and of our church, and, as I believe, to the great injury of the Christian cause wherever our pastor and our church are known.

It is generally understood that this wicked scandal has originated with and been circulated by certain members of our own church, who charge immoral practices of the worst possible character against our pastor,

Now, to the end that justice may be done to all concerned,

and that the Christian religion may be speedily relieved from the stain and reproach which this scandal seems to cast upon it, I, a member of this church, respectfully request that you immediately institute a thorough and earnest investigation as to the truth of the following charges and specifications:

1st. I charge Theodore Tilton, a member of this church, with having circulated and promoted scandals derogatory to the Christian integrity of our Pastor, and injurious to the reputation of this church.

SPECIFICATIONS,

1st. In an interview between Theodore Tilton and Rev. E. L. Taylor, D. D. at the office of *The Brooklyn Union* in the Spring of 1871, the said Theodore Tilton stated that Rev. Henry Ward Beecher preached to several (7 or 8) of his mistresses every Sunday evening. Upon being rebuked by Dr. Taylor, he reiterated the charge, and said that he would make it in Mr. Beecher's presence if desired.

Witness: Rev. E. L. L. TAYLOR, D. D., 150 Nassau-st., New-York City.

In a conversation with Mr. Andrew Bradshaw at his residence, in the latter part of November, 1872, Theodore Tilton requested Mr. Bradshaw not to repeat certain statements which had previously been made to him by Mr. Tilton, adding that he retracted none of the accusations which he had formerly made against Mr. Beecher, but that he wished to hush the scandal on Mr. Beecher's account; that Mr. Beecher was a bad man, and not a safe person to be allowed to enter the families of his church; that if this scandal ever were cleared up, he (Tilton) would be the only one of the three involved who would be unhurt by it, and that he was silently suffering now for Mr. Beecher's sake.

Witness: ANDREW BRADSHAW, 485 Henry-st., Brooklyn, N. Y. I will only add that I make these charges not from any feeling of ill-will toward the accused, but from a sense of duty as a member of this church, and with the desire and hope that this scandal may cease and that the stain now resting upon our church may be removed.

Yours fraternally,

WM. F. WEST.

[The paper was marked "Exhibit 68."]

BEECHER ABSENT FROM COMMITTEE MEETINGS.

Mr. Fullerton—What, if anything, occurred between yourself and Mr. Beecher in regard to Specification 3d? A. Nothing excepting that Mr. Beecher was a member of the Examining Committee, and as such, that specification was brought before him, the same as before any other member of the Committee.

Q. Where did the Committee meet when this specification was placed before them? A. They met in the parlors of the church.

Q. Who placed it before them? A. I placed it before them.

Q. Was Mr. Beecher on that Committee at that time? A. He was not present at that meeting.

Q. Was he present at any meeting when this specification came up? A. Not to my knowledge.

Q. Do you know whether it ever came to Mr. Beecher's knowledge from any conversation you had with him? A. No, Sir.

Q. I now show you "Exhibit 29," consisting of a letter of Mr. Tallmadge and something else. Did you ever see those before or either of them? [Handing witness papers]. A. I never saw this particular paper.

Q. In whose handwriting are the papers? A. In the handwriting of Mr. Tallmadge.

Q. Both of them? A. I should judge so, as far as I can tell.

Q. What office did he hold at that time? A. He was assistant clerk of the church, and clerk of the Examining Committee.

Q. Did this third specification form a part of your charges, as you at length placed them before the Committee? A. It did.

Mr. Evarts—I object that the third specification has utterly failed to be brought to the notice of Mr. Beecher, as it now stands on the evidence.

Judge Neilson—It cannot be read, but I think this question can be answered.

Mr. Evarts—If your Honor please, a single observation. It is of no importance what it constituted, or to whom it was known if it constituted no part of anything that was brought to Mr. Beecher's knowledge, because the argument is not concerning this Committee having before them this, that or the other thing, but concerning Mr. Beecher's knowledge of that fact.

Mr. Fullerton—There is more than one way to show that this third specification was brought home to Mr. Beecher's knowledge.

Judge Neilson—It was not read, but it may have been brought home to his knowledge.

Mr. Beach—Will your Honor please consider one thing, that we have given several interviews between Mr. Moulton and Mr. Beecher in regard to the West charges, which were made before the Committee, in which those charges have been recognized by Mr. Beecher in those conversations, he being one of the Examining Committee, before which they were pending. Now, Sir, it is perfectly competent for us, I submit to you, under that recognition by Mr. Beecher, to show what those charges were as they were finally adopted by that Committee.

Judge Neilson—All that might well occur, and yet this third specification never actually came under his notice; and my opinion is that at present this mere formal question can be answered, showing that it is a part of the proceedings, and it remains to be seen whether it can be brought home to Mr. Beecher.

Mr. Fullerton—That is just the view I take of it, exactly, because I shall supplement this testimony with other upon this subject.

Mr. Evarts—Your Honor will note our exception as it stands at present.

Judge Neilson—Yes, Sir.

Q. Now, the question, Mr. West, is whether this third specification formed a part of your charges, as you finally submitted them to the Committee? A. It did.

Mr. Beach—You had better have that marked for identification.

[Marked "Ex. 60, for identification."]

Q. As near as you can tell, when were these amended charges placed before the Committee? A. I can give you the exact date if you would like it, by referring to a copy that I have of them.

Q. Refer to any memorandum that you have so as to enable you to answer the question. A. [Referring to memorandum.] September 2, 1873.



Q. State, if you please, who composed that Committee. A. Who composed it?

Q. At that time; yes, Sir. A. Do you wish the names?

Q. If you please. A. I don't know what I can do that. There were a large number. The Committee was composed of the Pastor and Assistant Pastor of the church, of the deacons and of the members of the Committee who were elected as such.

Q. Are you speaking now of the Committee before whom you laid the amended charges? A. Yes, Sir; I thought that was what you referred to.

Q. It was? A. The Examining Committee.

Q. Who was the assistant Pastor at that time? A. Rev. S. B. Halliday.

Q. Was any action taken by that Committee that you know of? A. The Committee passed the resolution directing the church to send the charges.

Mr. Shearman—Well?

Mr. Fullerton—Now, gentlemen, will you be kind enough—

Judge Neilson—The answer taken down will simply be that the Committee adopted the resolution.

Mr. Fullerton—Yes, Sir. [To defendant's counsel.] If you will furnish me that resolution now I will put it in—the resolution passed by the Committee on the presentation of the amended charges of Mr. West.

Mr. Tracy—There is no paper here.

Q. What resolution was offered and passed by the Committee in reference to the amended charges which you read before them?

Mr. Shearman—To that we object. It is not shown that Mr. Beecher was present; besides, it is not even shown that this witness was present, or that he was a member of the Committee.

Mr. Beach—It is shown that he was a member of the Committee.

Mr. Shearman—I beg pardon; he was not a member of the Committee at this time, as the witness himself will say, I think.

Mr. Fullerton—He was not a member of the Committee, but he states that he went and presented these amended charges.

Mr. Shearman—I beg pardon, he has not even said that yet. The gentleman—if you will excuse me—confounds the interview of July 1 with that of September 2, or if not, he is asking his question in such shape that the witness will.

Mr. Fullerton—Well, what position do you take about it? you say I am mistaken. [To the witness.] Haven't I asked you if you went and presented these charges, with the 3d specification attached? A. With the 3d specification? yes, Sir; that was in September.

Q. Now, I ask you what action the Committee took when you thus presented those amended charges and specifications? A. They accepted that specification.

Mr. Shearman—One moment. To that we object. There is no evidence that Mr. Beecher was present.

Judge Neilson [to the witness]—The question is whether Mr. Beecher was present.

The Witness—He was not present.

Mr. Fullerton—That does not preclude me from giving the evidence, Sir, in my judgment.

Judge Neilson—I think it does. I think you might put in a record, although he was not present; but not to affect him personally.

Mr. Fullerton—This is a record.

Judge Neilson—No; it seems to have been informal.

Mr. Fullerton—I don't understand the difference between putting in a record and putting in what took place at the time. Suppose we follow this up by showing that Mr. Beecher subsequently became aware of the action of this Committee?

Judge Neilson—We will take it up again, if you wish, when you find that out.

Mr. Fullerton—Then I will say this, that I have already proved that he was aware of it. I propose now to prove that the Committee directed that notice should be given and a copy of these charges should be served. We have already proved that a notice was given, which has been read in evidence. We have proved that the charges were served, and they have been read in evidence. And we have proved various conversations between Mr. Beecher and others in respect to these very charges, containing the third charge.

Mr. Evarts—There I think you are mistaken.

Judge Neilson—The last conversation, being to the effect that Mr. West persisted in presenting the charges, adhered to that, although Mr. Beecher advised the contrary; but there is no suggestion that Mr. Beecher knew what action the Committee took, I think, in the way of resolution.

Mr. Beach—You are confining your observations, Sir, to the conversations with Mr. West; we refer to those between Mr. Moulton and Mr. Beecher.

Mr. Evarts—We say there was no such conversation with Mr. Moulton.

Judge Neilson—I think Mr. Moulton did not say—

Mr. Fullerton—I can recur to this subject again?

Judge Neilson—You may exercise your judgment. I think it does not yet appear that Mr. Beecher knew that it was adopted by the Committee.

Mr. Fullerton—If I exercised my judgment, Sir, I should go on. Now, I think I have laid the foundation for it. I think it is clearly admissible in evidence. It is not necessary that I should connect Mr. Beecher, step by step, with the action taken by a Committee of that church with reference to this scandal, if in the end we prove that he was aware of what they did. I propose to show what he said with reference to the action of this Committee, what advice he gave with reference to this investigation then set on foot by this witness by the presentation of these charges.

Judge Neilson—You may reserve that point.

Mr. Fullerton—Your Honor will bear in mind that Mr. Moulton gave evidence with respect to these charges, that Mr. Beecher said to him that he must get them over until after vacation—until Fall; and that he did get them passed over until Fall; and then he gave subsequently a conversation between himself and Mr. Beecher in regard to these very charges, in the Autumn of 1873. The question was, how they should be met.

Judge Neilson—The point before us is whether this Commit-

tee adopted a resolution, a thing that Mr. Moulton does not appear to have known, and a thing which it does not appear that Mr. Beecher knew. Therefore I think the objection is good as far as it goes. At the same time, if it were a record of the Church, I think it might be read as such. It does not appear to be.

Mr. Evarts—Your Honor will understand that we do not agree with this narrative of Mr. Moulton's testimony. On the contrary, it is testimony that was retracted and never was replaced by any substitute; and we objected, your Honor will remember, to have the paper remain evidence, but your Honor decided that it should remain.

Mr. Fullerton—Well, I will go on. [To the Witness.] Were these charges ever tried before that Committee that you are aware of?

Mr. Shearman—We object to that until it is shown that Mr. Beecher was present.

Judge Neilson—I think he may answer that.

The Witness—Not to my knowledge.

Q. Do you know that anything was done by the Committee in regard to it?

Mr. Evarts—He did not continue a member of the Committee.

The Witness—A copy of it was sent to Mr. Tilton in October.

Mr. Shearman—I object to that. He simply asks whether anything was done. I suppose a proper answer is yes or no; that is all Judge Fullerton desires.

Mr. Fullerton—I will make my desires known better than you can. [To the witness.] Was a copy of these charges served upon Mr. Tilton within your knowledge?

Mr. Shearman—To that we object. It has got nothing to do with Mr. Beecher. The fact is, your Honor, as the witness has very properly said, Mr. Beecher was not present on any of the occasions; he had nothing to do with the action; and this is an attempt to make him responsible for what his church did in its own independent government, being a congregational body not subject to the domination of any pastor or priest—doing what the Church saw fit. Now, Mr. Beecher is not answerable for what the Church did or did not do unless he was a part of that transaction.

Judge Neilson—I think a sufficient answer to the question is that it does not appear, and there is no suggestion that Mr. West himself personally served the papers upon Mr. Tilton. He only knows from information.

Mr. Fullerton—My question, Sir, involves actual, personal knowledge upon his part, whether he served them himself or was present when some other person served them.

Judge Neilson—Well, you may ask him that.

Mr. Fullerton—I asked him whether he has any knowledge upon the subject.

Judge Neilson—I misapprehended you. Go on.

Mr. Evarts—If it is limited to an answer of that kind, go on.

Judge Neilson (to the stenographer)—Read the question.

THE TRIBUNE's stenographer read the question as follows: "Was a copy of those charges served upon Mr. Tilton within your knowledge?" A. I cannot answer that question without

an explanation, that I can see, your Honor. It depends upon what you call my knowledge.

Q. Were you present when they were served? A. I was not.

Q. Did you serve them yourself? A. I did not.

Q. Did you have any conversation with Mr. Beecher with reference to their service upon Mr. Tilton? A. I did not.

Q. Now, pass from that, then. What else took place between yourself and Mr. Beecher with reference to this scandal, if anything? A. I don't remember any other interview in regard to it.

Q. Do you recollect an occurrence in Plymouth Church when Mr. Tilton addressed the congregation there? A. I do, Sir.

Q. When was that occurrence? A. I think it was the 31st of October, 1873. It was after the presentation of these charges.

Q. State, if you please, what occurred at that time?

Mr. Evarts—We assume Mr. Beecher was there.

Mr. Fullerton—Yes, that is right.

The Witness—It would be rather difficult for me to do it. It was a long meeting and I think an account of it took up some columns in the papers—two or three columns.

Q. What was before the body at that time—what question? A. Before the Church at that time, the question was a resolution which had been presented or which was brought before the church by the Examining Committee with reference to these charges which had been made against Mr. Beecher.

Mr. Evarts—A written resolution? A. Yes, Sir; I understand it was written. It was read from a paper.

Mr. Fullerton—It went upon the record, did it? A. Yes, Sir.

Mr. Fullerton—Now, gentlemen, if you will produce that I will put it in. [To the Witness.] Give us the date again. A. October 31st, as I remember it, 1873.

Mr. Fullerton—I read. It is under the head of Thursday evening, October 23d, 1873. [To the Witness.] Is that the right date? A. October 23d.

Mr. Beach—That was the resolution? A. Yes, Sir.

Mr. Shearman—The proper date is Friday evening, October 31st. That was when action was taken.

Mr. Fullerton [reading]:

*Whereas*, Charges were preferred to this Committee by William F. West against Theodore Tilton; and

*Whereas*, A Special Committee having been appointed by this Committee to wait upon said Tilton in reference to said charges, said Tilton on the evening of the 6th of October instant made answer to that Special Committee in these words: "I have not for nearly four years past been an attendant of Plymouth Church, nor have I considered myself a member of it, and I do not now, nor does the pastor of the church consider me a member, and I do not hold myself amenable to its jurisdiction in any manner whatever;" and

*Whereas*, Theodore Tilton, in a reply to a communication addressed to him by the Clerk of this Committee, and which communication, with a copy of the charges preferred against him by William F. West, were put into the hands of said Tilton on the 17th day of October inst., and a request made of him that he should answer the same by the 23d day of October inst., says in a letter addressed to the Clerk of this Committee, under date of October 23d, 1873: "It is about four years since I terminated all connection with the Church, and am not now a member thereof; therefore, the document addressed to me in that capacity I cannot receive;" and



Whereas it thus appears that Theodore Tilton, a member of this Church, has abandoned his connection with the Church by prolonged absence from all its services, and ordinances; therefore,

*Resolved.* That this Committee recommend to the church that the name of Theodore Tilton be dropped from the roll of membership of the church, as provided by Rule No. 7.

Brother White moved to amend the resolution, so as to recommend to the church to excommunicate Mr. Tilton, in place of dropping from the roll. The amendment was lost.

The ayes and noes being called for on the preambles and resolution, the vote stood as follows:

Ayes—Duncan, Moody, Ropes, Garbutt, Hawkins, Howard, Belder, Day and Halliday; and sisters Pratt, Moody, Fitzgerald and Halliday—13.

Noes—Benedict, White, Rush, Tallmadge and Manchester—5. The Committee then adjourned.

D. W. TALLMADGE, Clerk.

Q. Is that the resolution that you speak of? A. That is the resolution; yes, Sir. It was offered on the 31st.

Q. Now, I recall your attention to the scene in church, when Mr. Tilton addressed the body. What occurred then?

Mr. Evarts—We understand this report was in before that meeting.

Mr. Fullerton—Certainly.

The Witness—Mr. Tilton asked permission to speak, as I remember it, and the Moderator said that Mr. Tilton did not need to ask permission, as he was a member of the church and had the right to speak. Mr. Tilton then said, in substance, that a report had been spread that he had slandered the pastor of this church; that he had come there to say, in Mr. Beecher's presence, and in the presence of his friends, that if he had slandered him he was there to answer to the man whom he had slandered; that if Beecher had aught to say against him, if he would say it, he would answer him, as God was his judge. Words to that effect. I don't remember that those were the exact words.

Q. What followed that address? A. There was some applause, I believe, that followed.

Q. Well, I had not reference to that; but were any other remarks made by any other person that evening? A. Mr. Beecher made some remarks. There were some remarks made by various members of the church, as I remember.

Q. I call attention particularly to Mr. Beecher's remarks. What did he say in reference to this proposition of Mr. Tilton to meet any accusation against him? A. I remember it; he said that he had nothing—he had no charges to make against Mr. Tilton.

Q. Was that the substance of what he said in reply? A. Yes, Sir, in reply to that.

Q. Did you see Mrs. Bradshaw with reference to giving evidence to sustain these charges? A. I did.

Mr. Evarts—That we object to, if your Honor please. Anything passing between this witness and Mrs. Bradshaw we object to.

Judge Neilson—The mere fact that he saw her is proper.

Mr. Evarts—It is not important.

Q. Did you show her the charges which you had preferred, or any of them? A. I did.

Mr. Evarts—We object to it.

Judge Neilson—I think he can state whether he showed her the charges or not.

Mr. Evarts—The point is, that it is all irrelevant, as it does not touch Mr. Beecher. Of course, he knows concerning what he speaks, and therefore is a good witness in that regard, but it does not appear to us how anything that passed between him and Mrs. Bradshaw is material in this case. There is no foundation laid for it, as we suppose.

Judge Neilson—None of the conversation can be given. You can prove the naked fact that he showed the charges, if he did, to that lady.

Q. Did you show anything to Mrs. Bradshaw, and if so, what? A. I showed her the third specification of the charges.

Q. When was that done? A. It was in July or August; I cannot fix the date any more definitely than that—1873.

#### CROSS-EXAMINATION OF MR. WEST.

Mr. Shearman—In regard to Mr. Beecher's remarks at that meeting of October 31, 1873, don't you remember that Mr. Beecher said that, so far as he was concerned, all the difficulties that there had been between him and Theodore Tilton were buried? A. I remember something of that kind; yes, Sir.

Q. Don't you remember of his saying that he was sure that, as far as Mr. Tilton was concerned, they were all buried? A. Yes, Sir; I think I remember that?

Q. Did Mr. Tilton make any reply to Mr. Beecher's speech? A. No, Sir.

Q. He was present at the time, was he not? A. Yes, Sir; he was present.

Q. Go back to the time when you say that Mr. Beecher was appointed a Sub-Committee by the Examining Committee, when you were a member; will you please refresh your memory and consider whether it is not the fact that Mr. Beecher was actually appointed a Committee and said that he would see Mr. Tilton in an informal way. A. Well, as I remember it, Sir, he was appointed a Committee.

Q. But you are not sure of that are you? A. I remember that he was asked for a report several times; he was to see him, and he did make a report finally to the Committee.

Q. The report which you have described? A. Yes, Sir.

Q. Now, Sir, will you go back to that report and say whether you can say with certainty that Mr. Beecher made, himself, that report at all? A. Yes, Sir, I can; I can remember his position when he made it; I remember him perfectly as he sat in the room and made the report; I remember who were present at the time.

Q. Was not the report which Mr. Beecher made, and which you remember, a simple statement that he had been unable to find Mr. Tilton; that he was out of town; and was not this other report, which you have described at such length, a statement at second-hand, purporting to come from Mr. Beecher, but not made by Mr. Beecher in your presence? A. No, Sir.

Q. Of that you are positive? A. That I am as positive of as I can be. It was over three years ago it occurred, but as positive as I can be of anything.

Q. Was this the only committee that was appointed at or

about that time—in fact, while you were a member of the Examining Committee in Mr. Tilton's case? A. No, Sir; there was one appointed in 1872—November, 1872.

Q. Was this the only one appointed in 1871? A. The only one that I knew anything about or that I remember now.

Q. And that was a committee of one only, consisting of Mr. Beecher? A. Yes, Sir.

Q. When was this report made by Mr. Beecher, which you have described at length? A. It was, I think, in the early part of December—November or December of 1871.

Q. Was it not the first of December? A. I could not be positive as to the date.

Q. Just about that time? A. As I say, I made no memorandum of it at the time; it is simply as it exists in my memory I relate it here.

Q. Would your memory be refreshed by looking at the minutes of the Examining Committee? A. I think it would; yes, Sir.

Q. There is the meeting—this is the meeting of Dec. 1st, 1871 [handing book to witness]. Just refresh your memory and state whether Mr. Beecher was present at that meeting of Dec. 1st, 1871? A. That is not the meeting, I think, Mr. Shearman.

Q. Well, Sir, at the meeting of Dec. 1, 1871, the pastor was not present, was he? A. According to the minutes, he was not.

Q. Well, Sir, does not your recollection agree? A. No, Sir, I don't remember that meeting. I don't remember any of these special meetings. I simply remember the fact of Mr. Beecher making such a report as I speak of.

Q. You were present at that meeting of December, 1871? A. It is so stated there.

Q. But you believe you were? A. Yes, Sir, I believe I was.

Q. But you cannot remember anything about it? A. I can't remember anything particularly; no, Sir.

Q. Now, Sir, will you look at the meeting of December 15, 1871, and state in the first place that was not the ordinary meeting of the Examining Committee which was heard in the lecture room in presence of the church—whether this was not an ordinary meeting of the Examining Committee in the presence of all the church in the lecture room? A. Yes, Sir; it seems to be.

Q. Now, Sir, at that meeting was any business transacted with reference to Mr. Tilton? A. No, Sir, there was no business transacted before the church with regard to it. The matter was not brought before the church. I remember that distinctly.

Q. There never was anything done with reference to Mr. Tilton's name in meetings of the Examining Committee which were heard in presence of the church, was there? A. No, Sir.

Q. Now, will you look at the meeting of Dec. 22, 1871, and state whether the pastor was not absent from that meeting—whether Mr. Beecher was not absent from that meeting, and Mr. Halliday officiated in his absence? A. It is so stated, yes, Sir.

Q. Well, Sir, is not that correct? A. Yes, Sir; I have no reason to doubt it.

Q. Now, will you look at the meeting of December 29, 1871, and state whether any action was taken upon the matter of Mr. Tilton, at that meeting? A. I see no record of it.

Q. Well, Sir, don't you think, doesn't your recollection agree with that record, that no action was taken at the meeting of December 29, 1871, concerning Mr. Tilton? A. Yes, Sir; I know that it was not as late as that; I am positive of it.

Q. Wasn't it in the early part of December that this action to which you have referred was taken? A. It might have been in October, or it might have been in November; I cannot remember it any nearer than that.

Q. When Mr. Beecher was present? A. When he was present at one of the meetings.

Q. Will you be kind enough, after looking at this book, to look at the meeting of Nov. 3, 1871, and state whether that was not the meeting at which, for the first time, the pastor said anything on the subject of Mr. Tilton's case? A. Yes; I think so.

Q. And, on that occasion, was not all the substance of what he said, that he deemed it best that he should see Mr. Tilton; and that he would do so, and report to the Committee at an early day? A. That is as I remember it.

Q. Now, Sir, can you find any record there of the appointment of Mr. Beecher as a Committee to wait on Mr. Tilton? A. As being—as requesting that he should be permitted to see Mr. Tilton and report to the Committee in regard to it.

Q. That is what you called being appointed a Committee of one to wait upon him; isn't it? A. Yes, that is what I referred to.

Q. And was not that all about it? A. Yes, that was all about it; I think the record is correct.

Q. This was what I corrected in my question a little while ago, when I asked you if the fact was not that Mr. Beecher was never appointed a Committee, but was requested in an informal way, or requested himself in an informal way, an opportunity to confer with Mr. Tilton?

Mr. Morris—That already appears.

Q. And now that your memory is refreshed by looking at the record, are you not prepared to admit that you are entirely mistaken in saying that Mr. Beecher made this report which you have stated, and that the fact is that Mr. Halliday made a report in the absence of Mr. Beecher, and that that is the one which you have in your mind? A. If you will allow me to look at the record of the other meeting a moment, Mr. Shearman, please. After looking at the record I will state what I think were the facts in the case. I think that it was at the meeting of Nov. 3d, that the pastor made the statement with regard to Mr. Tilton in regard to his being in difficulty, and said that he had better see him.

Q. But that was before he was appointed a Committee? A. That was before he was appointed a Committee; yes, I think you are right about that, according to the records.

Q. Will you look at this pamphlet, and say whether that is the Life of Mrs. Woodhull, to which you referred as having been the occasion of the Committee's inquiry into Mr. Tilton's case, in 1871? A. I do not know, Sir; I have never read it; I do not know whether that is the one or not.

Q. Wasn't it in consequence of and upon the ground of a publication having been made by Mr. Tilton or some biography of Victoria C. Woodhull, upon which you urged the Committee to take action



In Mr. Tilton's case in 1871; was not that the ground stated by you to the Committee, or one of the grounds? A. That was one of the grounds; yes; one of the grounds.

Q. Hadn't you even seen the Life of Mrs. Woodhull at all? A. I think I had seen it on the news stands and heard it talked about.

Q. Well, cannot you recollect distinctly, by seeing it on the news stands, that it was substantially that paper? A. Well, as I remember it on the news-stands, it was a larger pamphlet than that; but still, I cannot be positive about it.

Q. Just look at it, and satisfy yourself? A. Well, Sir, I cannot possibly identify it in any way, because I do not remember anything about it.

Judge Neilson—That is all.

#### TESTIMONY OF FRANKLIN WOODRUFF.

Franklin Woodruff called on behalf of plaintiff, and sworn.

Mr. Fullerton—You are one of the firm of Woodruff & Robinson? A. I am.

Q. And a partner of Francis D. Moulton? A. I am.

Q. Do you recollect an interview between yourself, and Mr. Moulton, and Mr. Benjamin F. Tracy, which occurred at your office in the city of New-York—at Mr. Tracy's office? A. I do.

Q. When did that occur? A. I think it was very shortly after the publication of the Woodhull scandal.

Q. The Autumn of 1872? A. Yes, Sir.

Q. Was there more than one interview at that office? A. One interview between Mr. Moulton, Mr. Tracy and myself; but there was one by myself and Mr. Tracy prior—the evening before—to the interview that I had with Mr. Moulton and Mr. Tracy together.

Q. I want you to relate what occurred at the interview between yourself, Mr. Moulton and Mr. Tracy?

Mr. Evarts—That we object to, if your Honor please, Mr. Beecher not being present.

Mr. Beach—We have already shown by Mr. Moulton that it was communicated to Mr. Beecher.

Judge Neilson—I think we will receive it.

Mr. Evarts—Your Honor will note our exception.

Mr. Fullerton—Now state, if you please. A. Do you want me to state the interview with Mr. Tracy before the —?

Q. No, Sir; the interview with you three gentlemen. A. We met at Mr. Tracy's office; I think it was about half-past eight or nine o'clock, in the morning, in consultation growing out of this scandal that had been published by the Woodhull-Claffin paper.

Mr. Evarts—Excuse me a moment. I think your Honor may be wrong. If I am right in my present recollection, what was communicated to Mr. Beecher was given in evidence, to wit, the witness Moulton was allowed to state what he told Mr. Beecher concerning an interview that had taken place.

Judge Neilson—That refers to this interview.

Mr. Evarts—But Mr. Fullerton was not allowed to state what the interview was. There is a difference between narrating what he told Mr. Beecher, which might have no foundation in fact, as your Honor may see—I, of course, mean it only as an

illustration of the difference between telling what happened, and proving what happened. Now, Mr. Moulton was not allowed to prove what took place between Mr. Tracy and Mr. Beecher, and himself.

Judge Neilson—It was unnecessary, inasmuch as he told Mr. Beecher afterwards.

Mr. Evarts—Well, he was allowed to tell what he told Mr. Beecher; whether it was true or not was not the question then up. But he was not allowed to prove what took place, and this witness cannot be allowed, as we think, to prove what took place. It does not make it evidence as to what took place that Mr. Beecher was told that it took place. In other words, the distinction is between proving what was communicated to Mr. Beecher, which is good evidence, of course, because it comes to his ears, and then proving that what was communicated to him really took place, when it took place without his presence and knowledge.

Mr. Fullerton—Well, it having been communicated to Mr. Beecher, we now propose to prove that it did take place.

Mr. Evarts—Well, that does not give you a right.

Judge Neilson—No; the right comes in, if at all, on the theory that Mr. Tracy some way represented Mr. Beecher, or acted for him.

Mr. Evarts—Yes, Sir, that we understand.

Judge Neilson—And we have some general evidence on that subject.

Mr. Evarts—Your Honor has not admitted any evidence as yet based on that proposition.

Judge Neilson—It was not necessary.

Mr. Evarts—I don't say it was; I only say it is the question now before you. But I submit to your Honor that there is no evidence that affects Mr. Tracy's presence as being the presence of Mr. Beecher, and it is a matter of some considerable importance of course. I am not aware that there is any evidence that Mr. Beecher has sent Mr. Tracy in his place so that conversations with Mr. Tracy can be proved as conversations with Mr. Beecher. That is what is now proposed to be done.

Mr. Fullerton—May I go on?

Judge Neilson—No. I am in doubt about this. I don't wish to be hasty about it; I would like to hear your views.

Mr. Beach—This is the evidence, Sir. Mr. Moulton was asked this question by Mr. Fullerton:

Q. Now, what did you state to Mr. Beecher which had been stated to you? A. I said to Mr. Beecher that my partner, Mr. Woodruff, was very anxious that I should make some statement with regard to the Victoria Woodhull publication, inasmuch as many of his friends and many of mine, or several of his friends and several of mine, had criticised my position in reference to the story, that they not only criticised me but they criticised the firm, for my relations to the story; and I said to Mr. Beecher that Mr. Woodruff recommended me, under the circumstances, to take counsel in the matter; and I said to Mr. Beecher that I had asked Mr. Woodruff whom he could recommend, and he said that he would recommend Mr. Tracy; and I said to Mr. Beecher that I thought Mr. Tracy was a good man to consult on the subject: that he had a good cool head on his shoulders, and I thought would give good advice; and I said to Mr. Beecher, "If you have no objection, I will consult with Gen. Tracy, but

Gen. Tracy, and to get his best advice upon the subject, it will be necessary to tell Gen. Tracy the truth. If you have no objection, then, I will assent to my partner's wish, and consult with Gen. Tracy," and he said that he had no objection if I thought it was best, and I said that I did not see that I had any other course to pursue; my partner wanted me to do it, and I thought it was necessary to take advice, and that I did not know any better man to consult on the subject than Gen. Tracy.

It appears sufficiently from that that this interview between Mr. Tracy and Mr. Moulton and Mr. Woodruff was acquiesced in and recommended by Mr. Beecher himself, and that Mr. Moulton went to that interview representing the interests of Mr. Beecher, for whom he was acting, not for himself. Upon what subject was he to take advice? What was the business that led to the consultation of Gen. Tracy? Why, Sir, it was the business of Mr. Beecher. It was for the purpose of getting advice from a wise and sound gentleman, recommended by Mr. Beecher, upon that business; and when Mr. Moulton went to that interview, he went as the accredited agent of Mr. Beecher for that purpose, and consulted with the man recommended by Mr. Woodruff and approved by Mr. Beecher; and whatever occurred in that interview was communicated to Mr. Beecher; and, whether communicated or not, was yet an interview between his authorized agent to hold it with the parties with whom it was held. Independent of that, Sir, we have shown otherwise that Mr. Tracy assumed to represent the interest of Mr. Beecher in his interviews with Mr. Moulton. But, Sir, if Mr. Beecher had been at that interview, why, of course we could prove it as it occurred. Not having been present, so far in this examination, you have admitted the details of that interview as they were communicated to Mr. Beecher, and you have held as matter of law, as it undoubtedly is the law, that that interview having been communicated to Mr. Beecher, it becomes evidence as against him. Well, it is said by my learned friend there is quite a difference between detailing what transpired at an interview to Mr. Beecher and proving the facts which occurred at that interview. Well, that results, if your Honor please, I think, in this very dilemma from the course of proof to which your Honor has restricted us in the proving of those communications. I suppose the ordinary and orderly mode of proof, would have been to have given evidence by Mr. Moulton, of the facts, the details of conversations occurring at that interview, and then proving that they were communicated to Mr. Beecher. Your Honor has directed the subsequent order of proof —

Judge Neilson—As a matter of economy.

Mr. Beach—Yes, Sir, as a matter of economy; but it must not result, when we are endeavoring to economize time, in the reversal of a principal of law and a rule of evidence. Mr. Beecher having been made aware of that interview, and of the facts that transpired there, all that occurred becomes evidence against him. Was it not communicated to him? Mr. Moulton swears it was, and it is precisely the same then as if Mr. Beecher had been transposed to that very interview, and had heard all that occurred, and all that was communicated to him by Mr. Moulton. Now, Sir, if he is charged with the effect of that inter-

view, have we not a right to prove it by the ordinary means and volume of evidence? Is it to be said that we are restricted to the one witness, Mr. Moulton, who made the communication to Mr. Beecher?

Mr. Evarts—I have not said that.

Mr. Beach—Yes, Sir; but certainly that is the effect of the argument of the gentleman.

Mr. Evarts—I said you could not prove it by Mr. Moulton, and you were not allowed to prove it.

Mr. Beach—Could not prove it by Mr. Moulton! Did we not prove it by Mr. Moulton?

Mr. Evarts—Not in the least. You proved what Mr. Moulton told Mr. Beecher.

Mr. Beach—And Mr. Moulton swears that that was what transpired at that interview.

Mr. Evarts—No; what he told Mr. Beecher transpired.

Mr. Tracy [to Mr. Beach]—No; he has not said that.

Mr. Evarts—He was not allowed to swear, Sir.

Judge Neilson—It would have been allowable. The order of proof was at my suggestion. It seemed a waste of time to have the witness state what occurred at the interview, and then that he afterwards repeated it to Mr. Beecher, being a re-statement of the same thing, and simply with that view, to economy, the witness, at my suggestion, proceeded at once to state what occurred with Mr. Beecher on the subject.

Mr. Beach—The question—the answer to which I have read in part, was: "Now what did you state to Mr. Beecher which had been stated to you." That is, at that interview.

Mr. Evarts—Stated to Mr. Beecher?

Judge Neilson—Yes.

Mr. Beach [reading]: "Well I stated to Mr. Beecher what had been stated to me at that interview."

Mr. Evarts—That is what he stated.

Mr. Beach—Certainly it is what he stated, but it contains the affirmation that what he stated was what had been stated to him at that interview. The question is: "In company with your partner? A. With my partner; yes, Sir; and I told him what transpired at that interview between Mr. Woodruff, Gen. Tracy, and myself." Now, can the gentleman say that what Mr. Moulton stated to Mr. Beecher Mr. Moulton did not affirm was stated to him at that interview? Your Honor has held that we could prove what occurred at that interview, because it was stated to Mr. Beecher, and was adopted or rejected by him, as the fact might be. If adopted, then he adopted that interview as it occurred, and as stated by him, and Mr. Moulton having stated it occurred as there stated, I again ask the question, which the gentleman says he did not propound as a proposition, whether it is not possible we may prove the terms of that interview, as stated by Mr. Beecher, by additional evidence.

Mr. Evarts—We have never objected to that evidence. What you can prove by one witness you can prove by two, I suppose; but you cannot prove it by either, as I submit. The whole point, if your Honor please, of a narrative made to Mr. Beecher, is to affect him by his response or answer to it. That response or answer comes as his action upon what is narrated to him. If it is falsely narrated, if no such thing ever



took place, nevertheless it answers the purpose of being the communication made to him, upon which his response, which is to affect him, was made. Whenever you undertake to carry into that communication, as affecting him, his hearing it, and responding to it, or being silent, as the case may be, you undertake to prove the fact that did occur in a meeting at which he was not present, to which he was not a party; then you have gained no right to prove a matter which occurs without his being a party to it, simply because you have narrated to him the occurrence. What affects him is his receipt of the narration, and not its truth, or the fact. Then supposing it happened otherwise than as narrated. It is only what passes to Mr. Beecher that becomes the subject of evidence affecting him. Now let us look at the other proposition, that Mr. Tracy stands in this conference of three as if Mr. Beecher was there (for that is what it must come to) and what is the evidence? That Mr. Moulton said those Produce Exchange people had criticised him and his firm in reference to this Woodhull publication, and his (Moulton's) connection with it, and that his partners thought that something ought to be done about it, and some consultation to be had about it; and he told Mr. Beecher that Mr. Tracy would be a good man to consult with, and that in consulting with him he would have to tell him the truth. Very well, this affects Mr. Beecher, and Mr. Beecher says he is a very good man to consult with. Now, when those two gentlemen, in behalf of their relation to the matter, were taking consultation with Mr. Tracy, does that make Mr. Tracy the substitute for Mr. Beecher? Why, he was their own man, picked out by themselves to talk with in reference to their relations to the matter, and Mr. Beecher was told by Mr. Moulton (and that is the pregnancy of it), that he would have to tell Mr. Tracy the truth. Mr. Beecher had no objection to his telling him the truth. That don't follow that what he did tell him affected Mr. Beecher as if it had been told to Mr. Beecher himself, and yet it must come to that, or else Mr. Tracy's presence there does not affect Mr. Beecher at all. It is apparent, on Mr. Moulton's testimony, that Mr. Tracy had no fee paid him; he was not in the relation of a lawyer employed by Mr. Beecher, or a lawyer employed by Mr. Moulton, or Mr. Robinson. He was only the intelligent and experienced lawyer brought into consultation; but in the matter of that consultation, for the interest of Mr. Moulton, and of Mr. Robinson, it might be necessary to tell him the truth concerning Mr. Beecher.

Judge Neilson—And Mr. Beecher was a party to it, because the conference had been agreed upon—adopted upon his approval.

Mr. Evarts—I appeal to your Honor on that point. Consulted with him about this matter, if you please. "He is a good man." Then Mr. Moulton, says: "I may have to tell him the truth about your affairs." Mr. Beecher, says: "I have no objection to that," but that don't affect Mr. Beecher.

Mr. Beach—Gen. Pryor referred me to a case, and I have sent for the book.

Mr. Evarts—There is no pretense that Mr. Beecher ever com-

municated with Mr. Tracy, or said a word to him, or employed him in the least.

Mr. Beach—It is not necessary that he should. If I authorize a man to have a conference with another in reference to my business, to act as my representative and agent on an occasion, I submit to your Honor that what he says and does in regard to the subject of his agency is competent against me.

Mr. Evarts—The difficulty is, there is not the least scintilla of evidence of that kind. These gentlemen went to talk with Mr. Tracy about their own interest; but Mr. Moulton thought proper to say to Mr. Beecher, "In talking with him for our interest, I may have to tell him the truth about you." Mr. Beecher had no objection to the truth being told by him. That is the only connection Mr. Beecher has with that.

Judge Neilson [to Mr. Fullerton]—Is there any other topic you could go on with while we are waiting?

Mr. Fullerton—No, Sir; there are other interviews of the same character, involving precisely the same question, and therefore it would not be profitable to go on, on account of the same difficulty.

Mr. Evarts—It is near the hour of adjournment.

Mr. Beach [referring to book]—This authority is a distinct recognition of the principle I stated, but it is not so direct and specific that I should be able to state it to your Honor; but I don't understand that our friends on the other side deny the proposition that if Mr. Moulton had authority from Mr. Beecher to hold this interview with Mr. Tracy, why, then, the evidence which we propose is admissible. And it seems to come to the question whether or not the evidence which I have read to your Honor of the preliminary consultation between Mr. Moulton and Mr. Beecher in regard to taking advice from Mr. Tracy constitutes that agency, and I submit to your Honor that it does.

Mr. Tracy—You don't claim that Mr. Beecher would be bound by my advice?

Mr. Fullerton—No; not as bad as that.

Mr. Beach—I don't think that is a misfortune he is held to; but whether good or bad advice was given by Mr. Tracy on that occasion, the fact that Mr. Moulton was sent with the approval and approbation of Mr. Beecher to talk, it at least authenticates the advice as it was subsequently communicated by Mr. Moulton to Mr. Beecher; but unless your Honor wishes to see some authority on the question, I don't care to discuss it any further.

Judge Neilson—The proposition stated is simply economy of time.

Mr. Evarts—Your Honor sees my learned friend has sought to rely on some concurrence I have with him. I don't agree with him in the least.

Mr. Beach—No, I supposed you would concur with me in the point of evidence I have stated.

Mr. Evarts—If Mr. Beecher takes Mr. Tracy and says to him: "Mr. Moulton wishes to talk with you, or Mr. Robinson wishes to talk with you, and I wish to go in my behalf and talk with him," then what passed affects Mr. Beecher. The evidence is simply that Mr. Beecher said "consult with that gentleman, he is as good as any one, about your affairs."

The proposition you make to me, that you will have to tell him the truth, that constitutes no objection in my mind."

Judge Neilson—The question is whether the interview was had with the concurrence of Mr. Beecher or both parties.

Mr. Evarts—The question is whether Mr. Beecher is there present by that representation. Without that no evidence can be given against him, I submit—Whatever your Honor should recognize as a substitution, by an agent sent by Mr. Beecher to represent him in that interview. Now, that evidence is that these gentlemen wanted to talk with him about their relation to the scandal, and the only point upon which Mr. Moulton thought right to speak to Mr. Beecher was that in the consideration about their own affairs they might be able to tell Mr. Tracy concerning Mr. Beecher's affairs, and Mr. Beecher makes no objection to that. I submit there is not a particle of evidence beyond that.

Mr. Beach—Is it necessary for me to read this testimony again to your Honor?

Mr. Evarts—I heard it read before. That is the view I take of it.

Mr. Beach—You heard it read very unprofitably, because if there is anything apparent from the testimony of Mr. Moulton it is that the subject which was to be discussed in the proposed interview with Mr. Tracy was that which related to the interests of Mr. Beecher. There is not a single intimation, not a word in what I have read here in any part of this testimony, to indicate that the subject of the interview or of the advice of Mr. Woodruff to Mr. Moulton to take counsel had any relation whatever to the charges made in the Woodhull publication, or to the remarks made in the Woodhull publication connected either with Mr. Tilton or with Mr. Moulton.

Mr. Evarts—Have you read any word that you think is an authority to Mr. Tracy to act for Mr. Beecher?

Judge Neilson—I don't see the precise point. Any authority to Mr. Tracy? Authority to these persons to have an interview and to confer on this subject; and for that purpose to state the truth to a third person.

Mr. Evarts—But does that prove that it was the truth?

Judge Neilson—Oh! no.

Mr. Evarts—We don't know what took place.

Judge Neilson—That is the point.

Mr. Evarts—The point is that you must get Mr. Beecher there, somehow or other, or else what took place is of no consequence.

Judge Neilson—I see; that is your point. We will now adjourn. [To the jurors.] Please be here punctually to-morrow morning at eleven o'clock.

Mr. Mallison (Clerk)—This Court stands adjourned to Thursday at eleven o'clock.

## FOURTEENTH DAY'S PROCEEDINGS.

### MR. TILTON ON THE STAND.

IMPORTANT SPEECHES BY MR. EVARTS AND MR. PRYOR—IS A HUSBAND INCOMPETENT TO PROVE HIS WIFE'S DISHONOR?—THE MOST INTERESTING AND IMPORTANT QUESTION RAISED DURING THE TRIAL.

It has been known for days that Mr. Tilton would be called as a witness, and it was anticipated that no effort would be left untried to prevent his acceptance as a competent person to testify. The first indication of the approaching contest was the entrance of the lawyers' clerks with arms full of bulky law books, and hostilities were fairly opened soon after noon. Mr. Woodruff had stepped down from the witness chair, and there was a hurried consultation among the plaintiff's counsel. Then suddenly, at a sign from Mr. Fullerton, Mr. Tilton arose from his seat and stepped quickly to the vacant chair, amid the surprised murmurs of the audience. "I offer Mr. Tilton as a witness," said Mr. Fullerton, quietly. "But stop a moment," expostulated Mr. Evarts; "we object to him." Then followed a momentary scene of confusion in the space assigned to the lawyers. The clerks of the counsel sprang up and began the removal of the legal volumes from the floor to the tables upon which they were spread open at selected places; the lawyers on each side consulted among themselves earnestly; the jurymen wearily changed their positions in their chairs, and the audience sat almost breathless, craning their necks and awaiting eagerly the first note of the struggle.

Without formality Mr. Evarts began his argument against the competency of Mr. Tilton as a witness. In the mean time the plaintiff sat in the witness chair squarely facing the audience for the first time since the beginning of the trial, and therefore the object of general observation. He had not removed his overcoat, which he wore thrown open loosely, and he also continued to wear his gloves, as he usually does in the court-room. Mr. Evarts began his argument at 12:10, and had not concluded at recess—1 o'clock. He was earnest and eloquent, and the jury and audience listened with quiet attention. Recess came, and Mr. Evarts was not half done. The interval over, he resumed, but the witness chair was vacant, and Mr. Tilton sat beside his counsel. During the address, which lasted nearly two hours, there were several faint expressions of an inclination to applaud among the



spectators, but with that exception perfect quiet reigned, and the last hour of Mr. Evarts's argument was delivered without interruption.

It had been taken for granted that Mr. Beach would reply to Mr. Evarts, and it was therefore a surprise when Gen. Pryor arose, bowed to the Court, and proceeded to speak. Up to this time Gen. Pryor had not taken an active public part in the case, and there was, therefore, considerable curiosity to hear him. It did not take many moments to see that he was an eloquent orator. His declamation is eccentric, his gesticulation earnest and profuse, and his temperament evidently is nervously excitable. At times he bends forward and lowers his voice almost to a whisper. Then, suddenly, as he becomes aroused, his Indian-like figure straightens, his face lights up with intense earnestness, and his voice rings out clearly as a bell. Sometimes he speaks very slowly, long pauses occurring between his sentences, but at other times the words flow from his mouth without effort, and his delivery is wonderfully rapid. Gen. Pryor had not finished speaking at the hour of adjournment.

The last moments of Wednesday's session were occupied by an argument regarding the admission of Franklin Woodruff's testimony relating to a meeting at which Mr. Beecher was not present. The decision was postponed to Thursday morning, when Judge Neilson said that he had decided to admit the testimony objected to by the defense. Mr. Woodruff therefore resumed his seat in the witness chair and Judge Fullerton continued the examination. A part of Mr. Woodruff's testimony which attracted considerable attention was the statement that Mr. Tilton told Mr. Tracy that the crime with which he charged Mr. Beecher was adultery, but the woman was not named. Mr. Tracy conducted the cross-examination, entering fully into events before briefly narrated by Mr. Woodruff. Judge Neilson had explained previously that it might not be best to enter into any explanation of Mr. Tracy's professional conduct, as he was not on trial and needed no vindication; and therefore that subject was not pressed further than was necessary.

#### THE PROCEEDINGS.

The day's work began on Thursday with a long decision by Judge Neilson on a question, raised the previous evening, as to the admissibility of testimony concerning the interview between Mr. Moulton, Mr. Franklin Woodruff and Gen.

Tracy. The pith of the question—as of several others which have taken much time for their discussion and decision—was whether Mr. Beecher was connected with the conversation. Counsel for the defense objected to the testimony on the ground that Mr. Beecher had nothing to do with the meeting. The Court overruled the objection. Mr. Beach then called attention to what he deemed unnecessary and in some respects unjust newspaper comments on the trial, and wanted them stopped, or at least limited.

#### THE MOULTON-TRACY-WOODRUFF INTERVIEW ADMITTED.

Judge Neilson—I have given consideration to the question presented last evening and, in the first place, I think all notion of the professional relation on the part of Mr. Tracy is to be dismissed from the question as not necessary to it. I think we cannot recognize that he was there in a professional capacity. In the next place, as to the course of business in view of the decisions which have been made, I have not, at any time, decided, and of course could not, that a witness might not state an interview with another person, and then the fact that he repeated that to the party in interest. That is done every day; and ordinarily the mere suggestion of counsel that he purposes to pursue it and connect it, is deemed sufficient, and that act on the part of counsel, where he has the confidence of the Court, would ordinarily be regarded as sufficient to justify that inquiry, first, as to the conversation between the witness and the third person, and afterward repeating it to the party in interest. What might look as a decision of the Court was simply a direction, acquiesced in by the counsel, and with a view to save time, and so it is that we have saved time by going directly to the question whether a conversation had with a third person was repeated to the defendant, understood by him, and what was said or done by him in that relation; otherwise it would involve a repetition of the same thing. That, as I say, was a mere direction with a view to save time, and it was acquiesced in by counsel. The question now presented is, however, somewhat different. I have gone over the testimony carefully, and the question, of course, must be decided with a view to the proofs now before us, and I gather from those proofs very clearly that the former witness stated to the defendant that he had had conversation with various persons, alluding to his partners, and gave them to understand that there was a sense of unpleasantness and uneasiness in respect to it, and he desired some relief in some way, some conference with some wise person touching the answers he should give to the importunities he met with in respect to the scandal published in the papers. The evidence shows that upon that conference with the defendant it was agreed that Mr. Tracy should be consulted, and I regard that precisely as that the parties might agree that any layman of respectability might be consulted in respect to it. There was an agreement with this the present witness and Mr. Tracy to confer, and they did confer, and further, it appears from the evidence that after that conference it was reported to the defendant, and he approved of it and adopted it; and so, speaking simply with reference to the evidence before us, I

find it my duty to overrule this objection and receive the evidence. The counsel will take an exception.

Mr. Evarts—Your Honor understands that we except to the decision.

Judge Neilson—Yes, Sir.

#### MR. MORRIS NOT DISCOURTEOUS TO MR. BEECHER.

Mr. Beach—I am obliged once again to draw your Honor's attention to an ungrateful subject. You will remember that, some days ago, being dissatisfied with the comments which were daily attached in the publication by THE TRIBUNE of the proceedings of this trial, on behalf of the plaintiff I protested against the reports of that paper being received under the official sanction of this Court as an official report.

Judge Neilson—That was rather as to the introductory comments, was it not?

Mr. Beach—Yes, Sir. Now, I am furnished this morning with what purports to be Part 1st of the trial of Henry Ward Beecher, and it is inscribed "An Official Verbatim Report." I have not had time to examine in detail the proceedings contained in this pamphlet, but we have detected on the face of these pages several inaccuracies and omissions, which we think do great injustice to the cause of the plaintiff, and with permission, Sir, very briefly I will present one or two examples of the manner in which this report is prepared and presented to the public under the approval, apparently, of your Honor. First, in regard to counsel—and I refer but to one instance, Sir, in that relation. On page 152 of this pamphlet, speaking of an introduction which occurred between Mr. Beecher and two of the counsel of the plaintiff, of whom Mr. Morris was one, this pamphlet proceeds to say :

The recess was marked by an incident which removes all doubt concerning Ex-Judge Morris's feelings in regard to Mr. Beecher. As soon as Judge Neilson announced that the regular intermission would be taken, Mr. Morris stepped over to Mr. Porter and called his attention to one of the answers made by the witness. Mr. Beecher, observing Mr. Morris in conversation with his counsel, passed a jocular remark to him, but Mr. Tilton's counsel deliberately continued his conversation with Ex-Judge Porter. Mr. Beecher withdrew with heightened color. Ex-Judge Morris does not hesitate to denounce the pastor of Plymouth Church in private as well as in public.

Of course, Sir, I was not an observer of that interview, or if near enough to observe it I did not notice it; but I am authorized to say upon the part of Judge Morris that it is an entirely inaccurate report of what occurred. Mr. Morris was addressing to Mr. Porter some question of interest, and in the pursuit of the inquiries and the answers, Mr. Beecher approached the gentlemen and made some light and trivial remark which did not require from Mr. Morris immediate attention, and the conversation between him and Mr. Porter was pursued without the slightest intention upon the part of Judge Morris of manifesting any incivility towards Mr. Beecher. And I may be permitted to say, Sir, that I know nothing in the relations of the plaintiff's counsel to the defendant in this case which would call from them for any expression of discourtesy or incivility toward Mr. Beecher. No matter what may be the merits of this trial, Sir; no matter what may be its result, nevertheless we do not belong to that class of the profession how

adopt all the vindictiveness and passions which a litigation between parties may happen to excite with others. And, so far as I am concerned, Sir, I am very free to say that upon no occasion, as a gentleman, should I consider myself justified in offering the least rudeness towards the defendant in this action. And as to the allegation, Sir, in the concluding phrase of the quotation I have read, I am authorized by Judge Morris to say that it is utterly untrue that he denounced Mr. Beecher in public or private. He would consider it, Sir, as an unjustifiable course upon his part, whatever may be his views in regard to the truth of this litigation. In regard to witnesses, Sir—

Mr. Shearman—At page 52 there is a similar misstatement.

Mr. Beach—I am asked by Mr. Shearman, upon the part of the defendant, to refer to page 52, and see if it is a similar statement.

Mr. Shearman—Misstatement.

#### DESCRIPTION OF MOULTON AS A WITNESS.

Mr. Beach—Well, Sir, the report, on page 52, so far as it relates to Mr. Beecher and myself, may be substantially true, but the spirit of it, so far as I am able now to read it, is entirely at variance with the motives and, I think, with the actions both of Mr. Beecher and of myself, to whom he was being introduced. I may say, Sir, perhaps, with propriety here, that the counsel upon the part of the defendant were courteous enough before making that introduction, to myself, and I believe, also, to Judge Morris, to ask if it would be in any sense disagreeable to us, and I never before, Sir, having had the pleasure of an introduction to Mr. Beecher, was quite happy to welcome the occasion for that event. It is a great mistake, Sir, to suppose that the counsel on the part of the plaintiff enter into any of the asperities which may have been created in the bosoms of others, out of this most unfortunate transaction. We are here, Sir, to discharge a professional duty and to discharge it in the ordinary manner, without indicating what may be our personal sentiments and feeling in regard to the whole transaction. On page 72, Sir, in commenting upon the testimony of Mr. Moulton, this pamphlet says, speaking of that gentleman:

There is a painful lack of earnestness in the man if his bearing does him no injustice. When the gravity of the issue is considered his replies to the most vital questions often seem flippant. He asserts that the greatest preacher in America confessed adultery to him, and his manner is that of a listless gentleman giving his verdict upon a novel brand of champagne.

On page 97, Sir, another paragraph fell under my observation:

The witness's anxiety to play his best cards was painfully evident. He dragged in Dr. Storrs's name before it was time, and strove to anticipate the purpose of his counsel.

Well, Sir, at the head of every day's proceedings are attached comments of this character. I need not say to your Honor that, in our opinion, they do great injustice to the character, the manner and the spirit of Mr. Moulton upon the stand; and the occasion justifies me in saying that for propriety of demeanor, for suavity and gentlemanly conduct, for a high degree of intelligence in his conception of and answers to questions, no gentleman under my observa-



tion has ever sustained an examination of the length and severity to which Mr. Moulton was subjected with more credit and honor, both to his heart and his mind, and I am sure that your Honor will agree in that remark. And I am also quite sure, Sir, that whatever idea in other respects our friends upon the other side may entertain in regard to Mr. Moulton, they do not participate in these ungenerous, and uncandid, and severe criticisms upon his manner and mode of giving his testimony. Now, if your Honor please, I do not dispute the right of THE TRIBUNE, or any other member of the press, in its capacity as a public journal, to express whatever ideas and criticisms it may choose to publish in regard to counsel, or witnesses or Court. They have the utmost freedom in that respect, and, so far as I am concerned, I am quite free to admit that their comments, unfavorable to myself, are, most probably, entirely accurate and just. But when those comments, those private opinions of THE TRIBUNE, not only with regard to the proceedings in this court-room, but to transactions which transpired during the recess of the Court, are affixed to its report of the trial, ushered to the public under the official sanction of this Court, we are justified, I think, in asking from your Honor a disclaimer of that official character, and we do ask it.

Judge Neilson—I regret that those causes of criticism should arise, and will communicate with the editor of THE TRIBUNE upon the subject, in reference to the future publications, which I hope may be rendered satisfactory. Will you proceed now, Mr. Fullerton?

#### MR. EVARTS ON NEWSPAPER CRITICISM.

Mr. Evarts—I may, perhaps, be permitted to say a word, if your Honor please. Whatever either my learned associates or myself may have to say in regard to Mr. Moulton as a witness will be said at the proper stage of the cause, and under the proper responsibility of counsel, and for a legitimate purpose; and we do not sympathize with any criticisms of witnesses or of counsel on one side or the other in the trial of the cause. We, the counsel, are not on trial, nor have we exposed ourselves voluntarily to exhibition. We are here in the discharge, on one side and the other, of responsible, difficult, solemn duties; and the mere fact that, as all proceedings in Court are public, there is a crowd here, and as the interest of the community centers upon this trial, the press is largely and properly interested in disseminating the facts of the trial throughout the country, does not, in our judgment, expose any of us to the criticism that makes to actors on the stage from men who pay for tickets to be amused at the exhibition.

Judge Neilson—Proceed Mr. Fullerton.

#### MR. WOODRUFF'S TESTIMONY RESUMED.

Franklin Woodruff was then recalled and examined by Mr. Fullerton.

Q. I recall your attention to an interview between yourself, Mr. Moulton and Mr. Tracy, which took place in the Fall of '72 at Mr. Tracy's office, and ask you what then and there occurred? A. I called at Mr. Tracy's office, with Mr. Moulton, I think it was about half-past eight o'clock in the morning, for the pur-

pose of Mr. Moulton's relating to Mr. Tracy the history of this scandal case.

Mr. Evarts—No matter what the purpose was. What occurred between you? A. Well, Mr. Moulton immediately—

Judge Neilson—Mr. Fullerton, keep your witness within the line.

The Witness—Mr. Moulton immediately proceeded to tell Gen. Tracy all about the case.

Q. What did he tell him—just repeat it now? A. And his connection with the case. He told him that the essential points of this Woodhull scandal were true. He told him of what he had been doing in regard to the case, commencing back at the time when he went to Mr. Beecher—when he went for Mr. Beecher on the prayer meeting evening, and told him what Mr. Beecher had done—told him what he had done—

Mr. Evarts—State to us what he told him.

Judge Neilson—Get your witness to the point, Mr. Fullerton.

Mr. Fullerton—I want you to state what Mr. Moulton said. Do not, please, state that he told you about such a thing, but tell us what he said in regard to that thing—the substance of it; of course you cannot repeat the words? A. Well, he told Gen. Tracy, as I have stated, that the essential points of his story, as published in the paper, were true; and he told him that he went for Mr. Beecher on a certain evening; that Mr. Beecher went to his house, and from there to Mrs. Tilton's. He told Gen. Tracy that Mrs. Tilton had written a confession, and afterwards a retraction; and he told Gen. Tracy what he had done—how he had—

Q. What did he say he had done? A. He told him that he had striven to keep the thing covered up—keep the whole story covered up—and that, so far, he had been able to; but now the story was published by the Woodhull-Clafin paper. He told him that I was very urgent, that he should consult Gen. Tracy as counsel, that what he might do should be done wisely; that I feared—or at least I expected—that he would have to make some statement, and that if he did so, it was necessary to do it under the advice of counsel; and he had been asked, he told Gen. Tracy, to deny the story.

Q. How is that; repeat that? A. He told Gen. Tracy that he had been asked to deny the story in a public card; that I had objected and protested against it, and that he was not willing to do it. General Tracy said in reply—

Mr. Evarts—If your Honor please, I object to what Gen. Tracy said being given in evidence by this witness.

Judge Neilson—It is a part of the conversation.

Mr. Evarts—This witness has now said—as it now stands, this witness has made Gen. Tracy his counsel.

Judge Neilson—He did not say—

Mr. Evarts—But, your Honor, in these last three words of the witness, he has so said, as we regard it.

Judge Neilson—I think we must take it all, Sir.

Mr. Evarts—Your Honor will be so good as to note our exception to this specifically, and to anything from Gen. Tracy.

The Witness—I objected to Mr. Moulton making any statement in a public card.

Q. What did you say? A. I said that I would protest against;

that I would not, as he was a partner of mine—that I would not allow it; that I thought it would be very wrong to make any such statement of a story that he knew was true—deny it in a public card. Gen. Tracy replied that he did not recommend lying, but he thought in some cases—in this case particularly—that a man would be justified in denying that story; and I replied to Gen. Tracy that for half of Brooklyn I would not have Mr. Moulton or any other gentleman come out in a public denial with a written card. And Gen. Tracy spoke and says: "Can't Moulton and Tilton go to Europe for one or two years?" I said no, that could not be done; Mr. Robinson, the other partner, was in Europe, and that would be utterly impossible. Then Mr. Moulton—or, at least, Mr. Moulton said that he had observed silence, and he thought that was the only thing to do. I concurred in that, and Gen. Tracy said that silence was the best for all parties—to cover it up—best for all interests. That was the sum and substance, pretty much, of the conversation that morning. And then we met again, three or four days after, at Moulton's house in Remsen street.

Q. Now, give us that?

Mr. Evarts—That has not been brought in.

Mr. Fullerton—Oh! yes; it is.

Mr. Evarts—Not with Mr. Beecher.

Mr. Fullerton—Certainly it has. [To the witness:] Go on.

Mr. Evarts—Your Honor will note our exception.

The Witness—We met at Mr. Moulton's house—it was a Sunday evening after our conversation—by appointment; Mr. Tilton was there, Mr. Moulton was there, and I was there, and Gen. Tracy came there; we all went up into Mr. Moulton's study in the top story of the house, and there Mr. Moulton and Mr. Tilton told Gen. Tracy about the case, and, in addition to what Mr. Moulton said, showed Gen. Tracy the letter of contrition, and Gen. Tracy read it; but Mr. Tilton had expressed an unwillingness to have Gen. Tracy brought into the case.

Q. What did he say? A. Mr. Tilton—

Mr. Evarts—In Mr. Tracy's presence?

The Witness—He said to Gen. Tracy: "If Mr. Beecher and I shall ever get into law or into court in regard to the matter, could you or would you ever be counsel on his side," and Gen. Tracy said no, that he could not and should not; that he need not have any fears on that score. He went on to show him the letter of contrition; talked about the case as published in the Woodhull statement; and that is the sum and substance of the interview, only that Gen. Tracy recommended silence as essential and absolutely necessary for each and all the parties; that it was the best thing to keep the thing covered up; there seemed to be nothing else to do.

Q. Now, do I understand you to say that the letter of contrition was shown to Mr. Tracy after he made use of this observation in regard to not being Mr. Beecher's counsel? A. Yes, Sir; it was shown to him that evening afterwards.

Q. Did Mr. Tilton say anything manifesting an unwillingness to have Gen. Tracy brought in, and if so, what? A. He did; he said that he did not want any other parties to know about it; he thought it unwise to consult Mr. Tracy; and as Gen. Tracy at-

tended Mr. Beecher's church, he thought it might be unwise to have him in the case.

Judge Neilson—Was that in Mr. Tracy's presence?

The Witness—No; he did not say that in Gen. Tracy's presence.

Mr. Fullerton—Well, that will be stricken out.

Mr. Evarts—I understand the last answer is to be stricken out.

Judge Neilson—Yes; strike it out.

Mr. Fullerton—What did he say in Gen. Tracy's presence, if anything, about his unwillingness to have anything disclosed to him? A. I don't think he said anything in his presence.

Mr. Fullerton—That is all.

Here there was a pause, the defendant's counsel consulting together.

Mr. Beach—While the counsel on the other side are consulting, it may be proper for me to say in regard to the extraneous matter of which I spoke this morning, that this pamphlet does not profess to be published by THE TRIBUNE office, but by McDevitt, Campbell & Co., publishers; the contents of the report and comments upon the proceedings are contained in it as they appeared in THE TRIBUNE.

Judge Neilson—I would like to say before the cross-examination proceeds, that while the learned counsel will exercise their own judgment in regard to the cross-examining the witness as they think proper, I think it may be well to divest the question at once of all suggestion that Mr. Tracy is in any sense on trial. It is not so. Possibly that might make the cross-examination briefer and more kindly. Mr. Tracy is known to us as a gentleman of very high character, very conscientious in the discharge of his duty, and it is not necessary that he should on this occasion be vindicated in any sense whatever. Therefore we had better confine ourselves to the real merits.

Mr. Tracy—I am obliged to your Honor, and I will try so far as I am able.

#### CROSS-EXAMINATION OF MR. WOODRUFF.

Mr. Woodruff was then cross-examined by Mr. Tracy:

Q. Mr. Woodruff, are you definite as to the time of morning the interview was had at my office? A. I am pretty definite—somewhere between eight and nine o'clock.

Q. About how long did it last, do you think? A. I should think about half an hour to an hour.

Q. Did you meet Mr. Moulton on your way to your business? A. No, Sir.

Q. You called to introduce Mr. Moulton to me that morning, did you not? A. Yes, Sir.

Q. I never had seen him? A. I don't know that you had.

Q. You did introduce him to me that morning? A. I did.

Q. And you had known me for some time? A. I had.

Q. And your senior partner had known me? A. I don't know as to that.

Q. Well, you came into my office and introduced Mr. Moulton to me? A. I did.

Q. And stated the subject of the introduction. Did you not



say that you had called for the purpose of making an appointment when we could have a longer and more definite conversation on the subject? A. No, Sir; I saw you the evening previous, and probably had half an hour or three-quarters of an hour interview with you the evening before, and made this appointment for the next morning.

Q. Were there any papers present at the time you were at my office? A. I don't think there were.

Q. None at all? A. None that I remember.

Q. Not even the Woodhull publication? A. None that I recollect.

Q. The talk in my office was entirely general? A. It was about this case.

Q. But entirely general about the case? A. It was very fully about the case, I should think, as I recollect it.

Q. The object of consulting me was to ascertain what answer ought to be made to the Woodhull publication, was it not? A. Certainly.

Q. You felt that some reply ought to be made to it? A. I felt that Mr. Moulton would have to say something.

Q. Now, did you think that the Woodhull publication rested upon apparent information obtained from Moulton? Was that the reason of your thinking that he ought to make some answer? A. No, Sir; there were a great many people speaking to me about it—asking why Mr. Moulton did not come out and say something—why he did not deny it?

Q. It was because the article referred to him in some place as the source of information? A. Referred to him and also to Mr. Beecher.

Q. It referred to Mr. Moulton as the source of some of the information given in the article? A. Certainly, Sir.

Q. Particularly the pistol scene? A. Yes, Sir.

Q. You stated to me in conversation, did you not, that there were papers which it would be absolutely necessary for me to see before I could express any definite opinion as to what answer ought to be made? A. Yes, Sir.

Q. You said you had some papers? A. I didn't say I had, but Mr. Moulton did.

Q. Mr. Moulton said he had some, and I said, did I not, that it was impossible for me to express any opinion in the absence of these papers? A. Any positive opinion; you expressed yourself that silence was the only true course to pursue.

Q. But I could not decide that definitely at all, without seeing the papers? A. I don't know that you decided absolutely the question; I thought you were pretty firm in your views that that was the course to pursue, and the only course.

Q. Well, the object of the interview the next Sunday was that I might see the papers, and get more full information on the subject? A. Certainly; that the whole thing might be further considered.

Q. Do you recollect the time of day that I came to Mr. Moulton's house that afternoon? A. I don't know that I can tell the exact time; it was—somewhere in the afternoon, pretty near night, about four or five o'clock.

Q. Was it not about three o'clock? A. It might be three o'clock.

Q. Do you recollect Mr. Tilton was in the house when I came? A. I don't think he was.

Q. Do you recollect that I went to Mr. Moulton's study on Sunday afternoon, where I was shown the papers, and you were present and Mr. Moulton? A. I remember we were up there.

Q. Alone? A. For a very short time.

Q. Before Mr. Tilton came in? A. Yes.

Q. Now, were not some papers shown me there, and was not the object of going into the study to show me some of these papers? A. No; I think this occurred: I think Moulton talked with you, and after a moment went down stairs for Mr. Tilton, and he came up. I don't think that the papers were shown you until after Tilton came into the room; that is my recollection.

Q. Don't you remember that what was called the letter of apology was shown me on my first going into the room? A. No, Sir; I don't think that was shown you until after Mr. Tilton came up; that is my recollection.

Q. Don't you recollect my criticism on the paper that day? A. I remember some remark you made about it.

Q. Don't you remember, also, that the retraction was shown me? A. No, Sir, I don't.

Q. And the explanation of the retraction? A. I don't; I recollect talking about it; I don't recollect that that paper was shown you.

Q. Don't you think Mr. Moulton showed to me those three papers on Sunday afternoon? A. I don't know; very likely he did.

#### ON WHAT THE SCANDAL RESTS.

Q. Don't you recollect this? After I was shown that letter of contrition and criticised it, don't you remember that I asked Mr. Moulton, "Now, Mr. Moulton, on what does this scandal rest aside from these papers?"

Mr. Beach—I object to that question as assuming that Mr. Tracy criticised it.

Mr. Tracy—He said I did.

Mr. Beach—No, Sir; he said you made some remarks about it.

Mr. Tracy—That was his answer to my question of criticism.

Mr. Tracy—After that, don't you remember that I asked Mr. Moulton, "On what does this scandal rest aside from these papers?" And didn't he say to me, "It rests upon some statements that Mrs. Tilton has made to her husband"? A. Yes, Sir; I think he said that.

Q. And did I not ask him what it was; don't you remember my asking him that? A. I think you did.

Q. And didn't he say that he would prefer, if Mr. Tilton would consent, to have Mr. Tilton state that to me in his own words? A. No, Sir; I don't recollect that.

Q. And then didn't he go down stairs and bring Mr. Tilton up? A. No, Sir; I don't recollect it in that way; according to my recollection he went down stairs after Mr. Tilton very soon after we went up.

Q. Whether Mr. Tilton was there or not, didn't he say that he preferred to have Mr. Tilton state that in his own way? A. I don't recollect his saying that.

Q. Mr. Tilton did state it to me, didn't he? A. I don't recollect of his stating it to you.

Q. Don't you? A. No, Sir.

Q. Do you remember his having what is called "The True Story" there that afternoon? A. No, Sir.

Q. You do not? A. No, Sir.

Q. The big paper? A. No, Sir; I don't think I ever saw or heard of anything of that until Christmas after; that is according to my recollection.

Q. Did he read there that "True Story?" A. I don't recollect it. I should say not.

Q. Did Mr. Tilton make any statement to me of what his accusation against Mr. Beecher was? A. He said it was an accusation of adultery.

Q. Mr. Tilton said so to me? A. I so understood it.

Q. What did he say? A. He said Mr. Beecher had been guilty of adultery.

Q. With his wife? A. I don't know that he said with his wife; I am not sure he said with his wife.

Q. Were you ever present at any other interview with me between us four in that study? A. No, Sir; I think not; I don't recollect any other.

Q. And do you say that you never were present when Mr. Tilton read to me there what he called "The True Story?" A. I say that I have not the slightest recollection that the reading of that "True Story" occurred there, or that it ever occurred before you when I was present.

Q. You have no recollection? A. None at all. The "True Story," the first time I ever saw it I think it was Christmas Day, or Christmas Eve, that Mr. Tilton came to my house.

Q. What time did you leave Mr. Moulton's house that day? A. I guess it was ten o'clock.

Q. At night? A. At night.

Q. Who left first, do you remember? A. You and I left together, and we walked up as far as Clinton street together.

Q. That is the only interview at which you say we were ever present? A. That is the only interview when we were all present that I recollect of.

Q. Did you ever hear what was called the "true story" read? A. I did; yes, Sir.

Judge Neilson—But that was afterwards, I understand you? A. Yes, Sir, that was afterwards.

Mr. Tracy—The Woodhull scandal was present there that afternoon, was it not, on Sunday. A. I think it was.

Q. And that was the first interview that we had ever had where the papers were all present, so that I could consider the question of what—

Mr. Beach—Wait one moment.

The Witness—That was the interview —

Mr. Beach—Wait one moment.

Mr. Tracy—Was this the first interview that we had ever had when the Woodhull scandal was present? A. I think so; I would not swear positively; it might have been present that morning.

Q. And it was the first interview where what is called the apology or letter of contrition was present? A. The letter of contrition—I don't know; it is called three or four names.

Q. It was where the retraction was present and the explanation of the retraction? A. Yes, Sir.

Q. Do you remember my being shown any other paper that day by Mr. Moulton? A. I do not.

Q. You say that interview began about three or four o'clock in the afternoon and broke up at ten o'clock at night? A. I say according to my recollection it commenced somewhere from four or five o'clock, and that we stayed there until ten o'clock; it might have been half-past ten or eleven o'clock—half-past ten.

Q. Will you tell us what we were doing all that time? A. I believe we went down to supper; we spent part of the time in eating and drinking.

Q. How long did that take? A. I guess an hour or an hour and a half.

Q. What were we doing the balance of the time? A. Discussing this scandal?

Q. In its various phases? A. Yes, Sir.

Q. The Woodhull scandal? A. Yes, Sir.

Q. Do you remember that the pistol scene was discussed there? A. I think it was; yes, Sir; I recollect it was spoken about.

Q. And do you remember that the scene was also discussed, where the scandal represented Mrs. Woodhull with Mr. Moulton and Mr. Tilton together in the presence of Mr. Beecher, urging him to proceed to the Steinway Hall meeting—whether that interview was discussed? A. I think there was something said about it; I think so.

Q. Mr. Moulton there denied that the pistol scene was correctly reported in the papers, didn't he? A. I think he said it was not correctly reported.

Q. Did he also say that he never took or went with Mrs. Woodhull, in the presence of Mr. Beecher and Mr. Tilton, when Mr. Tilton urged him to preside at the Steinway Hall meeting? A. I don't recollect that.

Q. Don't you remember that I said to Mr. Moulton, "In so far as this story relates to you, I don't see but you can deny it—the part of it that relates to you?" A. Well, I think you did say something of the kind.

Q. And he admitted it, didn't he? A. Well, I don't recollect clearly about that, whether he admitted it or denied it, or not.

Q. Then, did I not take up this Woodhull story, paragraph by paragraph, so far as it related to Mr. Tilton? A. I think that was talked about and discussed.

Q. Paragraph by paragraph? A. I don't recollect it was discussed paragraph by paragraph, but I know it was generally talked about.

Q. And the object of my doing that was to ascertain how far the parties to it could deny it? A. Yes, Sir; I suppose so.

Q. Now, did not Mr. Moulton deny there that afternoon expressly that he had ever communicated this information to Mrs. Woodhull? A. I don't recollect that he did.

Q. You don't recollect that he did deny it? A. I don't recollect that he did.

Q. Do you mean to say that he admitted it? A. No, Sir; I don't mean to say he admitted it.

Q. Do you mean to say that the subject of whether or not he had communicated this subject to Mrs. Woodhull was discussed? A. It might have been discussed.



Q. Don't you remember that it was? A. No, Sir.

Q. [Referring to a copy of *The Woodhull & Claflin Weekly*.]

I will take, for instance, one scene here, about the "Child and the Grave;" do you remember that scene? A. I remember it being talked about somewhere; I cannot tell.

Q. Do you remember that this paragraph was read and talked about:

Mrs. Woodhull—His revelations were made subsequently, at sundry times, and during months of friendly intercourse, as occasion brought the subject up. I will, however, condense his statements to me, and state the facts as he related them, as consecutively as possible. I kept notes of the conversations as they occurred from time to time, but the matter is so much impressed on my mind that I have no hesitation in relating them from memory.

Reporter—Do you not fear that by taking the responsibility of this *exposé* you may involve yourself in trouble? Even if all you relate should be true, may not those involved deny it *in toto*, even the fact of their having made the statements?

Mrs. Woodhull—I do not fear anything of the sort. I know this thing must come out, and the statement of the plain, ungarmented truth will outweigh all the perjuries that can be invented, if it come to that pass. I have been charged with attempts at blackmailing, but I tell you, Sir, there is not money enough in these two cities to purchase my silence in this matter. I believe it is my duty and my mission to carry the torch, etc.

After that, Mrs. Woodhull again says:

Mr. Tilton first began to have suspicions of Mr. Beecher—

Mr. Fullerton—I object.

Judge Neilson—He has a right to recall the attention of the witness to parts of the paper to see if that helps his reply, and to see what answer he will make. I think that is the idea.

Mr. Fullerton—I think he has accomplished his purpose by reading as much as he has read.

Mr. Tracy—I say, frankly, I have to read much of this paper.

Mr. Fullerton—It seems to me he is taking occasion to read this paper when it ought not to be read.

Judge Neilson—Counsel ought not to continue to read the paper beyond what ought to be read.

Mr. Beach—I suppose the Court will admonish the jury that they are not to take it as true, because Mr. Tracy reads it.

Mr. Tracy—I am reading this for the purpose of calling the attention of the witness to it.

Judge Neilson—You are reading it to see if you can refresh the recollection of the witness?

Mr. Tracy—Yes, Sir; so that he will recollect that this scene was said to be false. [Reading]:

Mr. Tilton first began to have suspicions of Mr. Beecher on his own return from a long lecturing tour through the West. He questioned his little daughter privately in his study regarding what had transpired in his absence. The tale of iniquitous horror that was revealed to me was, he said, "enough to turn the heart of a stranger to stone, to say nothing of a husband and father." It was not the fact of the intimacy alone, but in addition to that the terrible orgies—so he said—of which his house had been made the scene, and the boldness with which matters had been carried on in the presence of his children—"These things drove me mad," said he, "and I went to Elizabeth and confronted her with the child and the damning tale she had told me. My wife did not deny the charge, nor attempt any palliation."

Do you remember that occurrence? A. I remember it somewhere, but I don't recollect it distinctly on that night.

Q. Was Mr. Tilton asked whether he had communicated such facts as that to Mrs. Woodhull? A. I don't recollect.

Q. And you don't recollect whether he admitted or denied that he had made that communication to Mrs. Woodhull. A. No, Sir.

#### REAL PURPOSE OF THE INTERVIEW.

Q. Do you mean to say generally that you don't remember whether Mr. Tilton denied having been the author of this information—of this article? A. I recollect that he denied it somewhere; I don't know whether it was there or not.

Q. Didn't he deny it then and there? A. Very likely he might have done so, but I don't recollect that he did. General, if you will allow me to say a word, I took very little interest in the discussion of that paper; I read it and heard it read once or twice; I lay on the sofa smoking a cigar and I paid very little attention to the discussion on that part of it.

Q. But you paid attention enough to it to say— A. I know it was there and talked about.

Q. That I was going over it, paragraph by paragraph, to see what these parties would probably deny? A. Yes, Sir; I think you were going over it.

Q. Was not the whole subject of that interview to see what disposition could be made of this Woodhull publication? A. It was that, I suppose, and the whole scandal together.

Q. That was the whole scandal before the public at that time? A. That was all that had been published that I know of.

Q. Do you remember, during that interview, Mr. Tilton's expression about *The Police Gazette*, saying, "although you see a hundred lies in it, and you know there are a hundred lies in it, yet you cannot say the whole paper is a lie." Do you remember that expression being made? A. No, Sir.

Q. You don't remember that reference to *The Police Gazette*? A. Yes, Sir.

Q. You say you were lying on the sofa? A. Yes, Sir.

Q. You are not able to repeat very much of that interview consecutively, are you? A. No, Sir; not a great deal of it; I did not lay it up with care.

Q. Were you asleep any of the time? A. No, Sir; I was not, according to my recollection.

Q. Now, do you remember of my advising Mr. Moulton to sign a card denying the Woodhull statement, in so far as it related to him? A. No, Sir; I don't think you advised him to sign a card.

Q. I said he could safely, did I not? A. Well, I don't recollect that you did General.

Q. Do you remember Mr. Tilton and me having an argument that afternoon as to whether he could truthfully deny the Woodhull publication or not? A. I think you talked about it, but I couldn't state the substance of the discussion.

Q. Was it not in that discussion between Mr. Tilton and myself, I arguing that from his statement to me he

could deny the Woodhull card—was it not in that connection that he said “You cannot take *The Police Gazette* and say because you see a hundred lies in it, that the whole paper is a lie ? A. I don’t recollect anything about *The Police Gazette*.

Q. “You can’t say the paper is all a lie ?” A. I don’t remember that.

Q. You don’t recollect that phraseology ? A. No, Sir.

Q. You say he charged Mr. Beecher with being an adulterer that day in my presence ? A. He said he had been guilty of adultery.

Q. Didn’t I turn to him then and say, “Do you mean with your wife ?” And was not his reply to me, “No, Sir ; with another woman ?” A. No, Sir ; I don’t recollect that you said that.

Q. You don’t remember that ? A. No, Sir.

Q. Do you remember any allusion to another woman that day in that conversation ? A. I don’t recollect any allusion to any woman, only that Mr. Beecher had been guilty of adultery ; he did not say with whom.

#### WOODRUFF’S AID TO TILTON’S PAPER.

Q. Were you interested in *The Golden Age* in some way at its commencement ?

Q. Just what did you do in connection with *The Golden Age*—state your connection with it ? A. Well, Sir, I was in the habit of going to Mr. Moulton frequently about the beginning of 1871 ; I met Mr. Tilton there once or twice ; I had rarely ever met him before that ; I knew him slightly ; and he told me about his being thrown out of *The Union* and *Independent*, and Mr. Moulton had talked with me about the case of Mr. Tilton’s position, and Mr. Tilton was out of employment, and he expressed a wish that if he could only have a paper, and I, without thinking of it, asked him what it would cost to start a paper. He said he thought a paper could be started with \$15,000 or \$20,000 capital, and the paper question was talked over, and we went and talked with other people about it, and finally we started a subscription paper, which I and others signed, and *The Golden Age* was started the 1st of March, I think, 1871.

Q. You subscribed how much yourself ? A. I subscribed \$3,000.

Q. And how much was subscribed in all ? A. I think \$12,000 ; Mr. Tilton, I believe, had several thousand dollars of his own beside—\$4,000 or \$5,000 or \$6,000.

Q. That made up the capital of *The Golden Age* ? A. I don’t know that it made up the capital of *The Golden Age* ; that was the money that was subscribed.

Q. That is all that you knew of what constituted the capital ? A. Yes, Sir.

Q. What Mr. Tilton had in ready money with you and what you subscribed was understood to be the financial basis of the paper, was it not ? A. I suppose so ; yes, Sir.

Q. I mean you and the other gentlemen who subscribed liberally ? A. Yes, Sir.

Q. Now, how was that subscription to be payable ? A. Well, I believe I was to call it in, or ask for it as it was wanted along, from time to time.

Q. And did you call it in ? A. I did ; it passed through my hands.

Q. When did you call it in ? A. Well, I think it was along somewhere in the late Summer or Fall of that year ; it might have been later ; I can’t recollect ; it was some time after.

Q. Was more than one payment made, or was half paid at one time ? A. Well, I think the half was paid at one time.

Q. You don’t remember when it was definitely ? A. No, Sir.

Q. Now, what did you get for that subscription ? A. I took a note from Mr. Tilton ; I took Mr. Tilton’s note.

Q. For the whole of it ? A. No, Sir ; for what I paid, the half ; I only paid in \$1,500.

Q. You paid in \$1,500 ? A. Yes, Sir, and took his note.

Q. And took his note ? A. Yes, Sir.

Q. For that \$1,500 ? A. Yes, Sir.

Q. The notes that have been introduced in the case are for the one-half of the subscription which was paid in ? A. Yes, Sir.

Q. Well, you saw Mr. Southwick about it also, did you not—one of the subscribers ? A. Yes, Sir.

Q. And you said to Mr. Southwick, did you not, that you had arranged it so that if the subscribers paid in one-half of the subscription, Mr. Tilton would give his notes for that amount, payable when *The Golden Age* was a success, and release the subscribers from the other half of the subscription ? A. No, Sir ; it did not occur that way at all.

Mr. Beach—Wait a moment. We object to that question. What passed between him and Mr. Southwick is not evidence here.

The Witness—Mr. Southwick drew these notes. That was his form of the note.

Q. Have you ever paid the whole \$3,000 ? A. No, Sir ; I have not.

Q. Have you ever been released from it ? A. Yes, Sir.

Q. By whom ? A. It was done in this way. I think in June, 1872, Mr. Tilton says, one day, that *The Golden Age* is about paying its way, and that he only owed two or three hundred dollars ; and says I, “Is that so ?” and says he, “Yes.” Says I, “You are in remarkable good shape.” “Yes.” And I remembered that he had \$7,000 deposited with the firm that he had just received a few days before from Mr. Bowen, and I said to Mr. Tilton, “Now, instead of calling in for the rest of this money, wouldn’t it be better for these people that have—for the contributions—for the notes—for the amount that has been paid in, that they should surrender them as a part of the loss that had been incurred in starting *The Golden Age*, and instead of calling in the other \$6,000, and you have \$12,000 in debt, not call it in, relinquish it, and be free of debt.” Well, that was discussed, and he said he did not think they would do it. I said, “I think they would do it ;” and he said it would be a very generous thing if they did. I told him I would try it ; so I saw them, and that was the way it was disposed of.

Q. And the basis of that was the \$7,000 which he had with you ? A. Not the basis of it. I knew he had several thousand dollars in money, and he said he was about paying his expenses, and he then owed two or three hundred dollars.



Q. It was the amount of money that he then had on deposit with you, together with what he said about the paper that led to the suggestion? A. No; I thought he was in good shape to be free of debt and take the thing and carry it along himself, taking all the circumstances.

Q. Yes, I understand; and it was the amount of money that he had on deposit with you at that time, together with his statement as to the prosperity of the paper, that led you to make that suggestion? A. I think those were the circumstances; yes, Sir.

Q. Do you remember about how much he had on deposit with you at the time he made that suggestion? A. I think he had seven or eight thousand dollars, it might have been more, it might not have been so much.

Q. That was the Bowen money? A. I presume so; I don't know positively.

Q. And that was done at that time, was it? A. What was one?

Q. I mean the arrangement for the surrender of the one-half of the subscription? A. Made on the 10th of June, when those notes were returned; my note shows that.

Q. The 10th of June? A. I think it was the 10th of June, 1872, that they were returned.

Q. Do you think that the return of the notes that have been introduced in evidence followed immediately on this suggestion of Mr. Tilton? A. What suggestion?

Q. Your suggestion to Mr. Tilton about the condition of the paper? A. Very soon after. It was a very few days that I was engaged in consummating it.

Q. Isn't there any way by which you can tell us when the half of these subscriptions were paid to Tilton? A. I don't believe there is, without a great deal of trouble. I might possibly find the checks by searching all through the papers of the firm of Woodruff and Robinson.

Q. What? A. The paid checks might possibly be found.

Q. Don't his account with your firm show that? A. He had other moneys there, and I could not tell. It might have been mixed together, you know.

Q. Would not your own account with the firm show your payment of the subscription? A. I think it would.

Q. Have you looked to see when it was? A. No, Sir; I have not.

Q. Will you? A. I will if you want me to.

Q. We do want you to. A. All right.

Q. We want to know exactly when you paid that subscription. You paid at the same time with the others, do you think? A. No, I don't think it was all paid at once.

Q. Were they paid about the same time? A. Well, there might have been a few weeks' difference. I don't think I asked for the money any faster than it was wanted.

Q. We want the facts, the dates when they were paid in; that is all? A. Yes.

Mr. Tracy—That is all.

The Witness—When do you want those dates, Gen. Tracy?

Mr. Tracy—Just as soon as you can get them.

Judge Neilson—[To Mr. Fullerton.] Do you wish to re-examine?

Mr. Fullerton—No, Sir.

#### TILTON'S RIGHT TO TESTIFY DENIED.

Theodore Tilton was called to the witness stand at this juncture. The Clerk began to administer the oath, when he was interrupted by counsel for the defense with an appeal to the Court denying Mr. Tilton's right to be a witness in the case. The senior counsel, Mr. Evarts, made the appeal, citing authorities and examples in proof of the claim set up. Following is Mr. Evarts's argument.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—Wait a moment, Mr. Clerk.

Mr. Fullerton—We offer Mr. Tilton as a witness.

Mr. Evarts—I object to him as a witness in the cause. The plaintiff is now called, as we understand, and offered to be sworn as a witness in his own behalf on the issue of this trial. That issue, as a question of fact, is solely and distinctly the adultery of his wife. That is the fact on which his right of action arises, on that alone; and as his wife's adultery, and the question of whether Mr. Beecher is a man of upright morals in this behalf, or guilty of this crime, is wholly immaterial in respect of Mr. Beecher's relation, except as the responsible person against whom the law gives recourse for the injury that has arisen from the wife's adultery, which has invaded the family, destroyed its unity, and, in the language of the law, been the cause by which he has lost the fellowship of his wife. Now, at the common law there would seem to be no question that neither husband nor wife can be called as a witness, not only upon an issue as grave as this against the character and conduct of the other, and as deep in its penetration into the unity of marriage, but on any of the more ordinary aspersions of character, or interferences with the family relation; and it is only, as I suppose, from there being some impression that in certain limited, statutory interferences with the integrity of the common law rule in this behalf, there have come to be occasions in which husband and wife can testify against or for one another, that it can be presumed or pretended that Mr. Tilton is a witness here on this issue. But if I was satisfied, your Honor, that the common law rule as obtaining in this State is of the regard and completeness that I have imputed to it, I think I shall have no difficulty in satisfying your Honor that the legislation of this State, so far from permitting any such disturbance or deviation from that rule in a case of this kind, has, on the other hand, completely confirmed it and refused to disturb it. It seems to be utterly unquestionable that the wife cannot be a witness in this case. The wife of this plaintiff cannot be a witness to sustain her life and character. The wife of Mr. Beecher cannot be a witness to defend her husband, because the common law has said, great as is the interest of the administration of justice, all-powerful as it should be, to draw into Court all evidence that can speak the truth within the rules of evidence, yet the administration of justice was made for society, not society for the administration of justice; and there are certain institutions of society lying at the base of our civilization, sustaining the whole fabric of its prosperity, its purity, its dignity and its strength, which must not

be undermined, or corrupted, or disfigured, or defiled, under the notion that in the administration of justice the truth must be sought in every quarter and from every witness. Thus the great minds, legislative, judicial, the great moralists, the great religious teachers, have all combined to say that there are certain limits imposed by the nature of human society in the fabric as it is constituted, for our defense and protection, that cannot be overpassed. That of client and attorney, that of clergyman and penitent, that of physician and patient, are, however, trivial compared with the relation of husband and wife, barriers against the introduction of evidence from sources thus protected; because, without that respect of the law to those relations, no client could confide in a lawyer to defend him, no patient in a physician to save him, no penitent in a priest or clergyman to aid him. But when we come to the relation of husband and wife, it is the foundation of our civilized society; for though nature provides the sexual attraction, yet it is the civil and religious institution of marriage that makes civilized Christian communities instead of loose and lustful herdings of the human race. Now, the common law, built up by masculine understandings that have raised its great establishment, uses no fine and sentimental phrases, such as come from platform orators, or from eloquent lawyers, but it understands the institution that it has undertaken to frame, and it protects it accordingly. It provides that when man and woman come together under the Divine law of purity, that they twain shall become one flesh, and thus that the population of the world shall be furnished, and not otherwise, consistently with the Divine command. And when the common law says that a man and his wife are one, or, in Lord Coke's language, "As two souls in one person"—it is said no man shall put asunder those who are thus joined together, and, least of all, in the name of law, shall the administration of justice pull and tear asunder this conjugal relation by the step of the sheriff or the precept of the judge that compels one to come and betray the other. It is not when the question comes before the Court so much the interest, or the duty, or the particular circumstances of the individual case of marriage that is thus brought up for attention, as the institution itself. It is the happy marriages, it is the unbroken marriages, it is the whole system of marriage, by which husband and wife are in the supreme confidence within their household and in each other's embrace, that no interests of society, no law of the land, can invade. And if every Englishman and every American prides himself upon the inviolability of his threshold against the king or all the power of government, except within certain strict mandates of the law authorizing a forcible passage of it, how much more important that all that makes the inviolability of the threshold important, to wit, the inviolability of the family and the protection of the marriage, should be sustained by the law against the king or the mandate, albeit, of the law!

#### DIFFERENT ASPECTS OF THE QUESTION.

Now, there are various aspects in which this matter presents itself in respect to this institution of marriage that do not, perhaps, readily rise to the mind as suggested by the particular circumstances of any case in which the question is agitated. Let us

suppose that a happy marriage has been invaded by a seducer, and that the wife has confessed to her husband and the husband has pardoned her, and they two, renewing their fidelity, continue to preserve the threatened unity, and have children born them on their renewed love. Now, while that fidelity continues, and that happiness is maintained, a stranger, by a libel suit, undertakes to fortify himself by compelling the husband to come and prove his wife's pardoned fault, and break that marriage, and disgrace and degrade his children. Does the law do that? I think not. Suppose that, in the case I have imagined, the guilty wife had as partner in her guilt a husband in another marriage, and after this pardon and these years of continued affection and of a family the fruits of it, there comes up a difficulty in the first family, in the family of which the seducer was the husband, and by new discoveries of a jealous wife there is an institution of a suit in regard to that husband's adultery, to wit, his adultery with this wife of the other marriage. Now, does our law permit this wife, suing for her divorce, to prove the adultery of her husband by bringing from this other family the husband to prove the adultery of his wife, his own wife, under those circumstances? I think not. And no case can be found that justifies any such proposition. Will the law, then, allow the question of whether the marriage relation is thus to be disturbed to depend upon the voluntary disposition of the husband? Is that the way the law deals with the general interests of society? And if you can imagine the baseness that could bring a husband into Court after having received a confession and pardoned it, and lived with his wife years in that relation, if you can conceive the baseness that such a husband should voluntarily appear as a witness, does the law change its rule in respect of the sanctity and protection of marriage by the difference between whether the law compels, or the law allows of voluntary production of testimony by a husband? I think your Honor will find nothing in the books that justifies any such opinion.

But there is another general relation of this subject in a different attitude, in which the community are interested. Suppose that a husband, instead of having discovered an adultery of his wife, has invented an adultery of his wife. Suppose that through the processes of law there is sought to be worked out a scheme of degradation and menace on the community, well known to the police, that is, a combination of corrupt married pairs to make victims of third persons. Now, is it permitted by our law that the wife should bring about attitudes implicating any impropriety, and then that the husband should be allowed to come into Court and prove the wife's adultery by the confession, as it would be said, of the paramour? No; this law in respect to the marriage relation is not merely a law *inter sese* in its protection of society, not merely a law *inter sese* between the married people, not only a protection of the marriage against innovation by one to the injury of the other, or by the public to disturb; but it is a position of the married people to society in which they move that is not to be disturbed. See how, if a husband is to be admitted to testify in issues of this kind, how the law, defective and inconsistent, necessarily, if it allows it, involves the interest of justice and throws down the protection of the opposite party. Suppose a husband gives false



testimony by which a defendant is destroyed in that suit, and suppose the wife of the husband thus witnessing can prove it is falsehood (I do not now speak of her exclusion from that suit; to that I have already referred), but when the defendant in that money action undertakes to vindicate truth and justice at the bar, and indicts the false witness, the husband, for perjury, the law says the sanctity of the marriage relation does not permit you to call his wife to convict him. The rules of law are universal, they are prescient, they are comprehensive, and they do not undertake to do by halves and imperfectly what the absolute interests of society require to be done completely and perfectly.

WORDS OF WISE COMMENTATORS CITED.

Now, if your Honor please, as I have no doubt that your Honor will consider the question here to be disposed of as grave and important, not only in reference to this trial, but in reference to the general administration of justice and the interest of marriage, I may be permitted to call your attention to the uniform tenor of the commentators of authority upon this rule, and to say that it is, in substance, a rule not so much of the law or evidence as of the law of marriage. "Bacon's Abridgment" gives, as the reason of the rule, the implacable dissensions which might be caused by it and the great danger of perjury in taking the oaths of persons under so great a bias, and the extreme hardship of the case. And Best adds to this observation of Bacon :

"This rule was not limited to protecting from disclosure matters communicated in nuptial confidence, or facts, the knowledge of which had been acquired in consequence of the relation of husband and wife, and was as absolute prohibition of the testimony of the witness to any facts affecting the husband or wife, as the case might be, however the knowledge of this fact might have been acquired."

He goes on with this observation, which it is right that I should call attention to, though the book shows the limit of it:

"But the rule only applied where the husband or wife was a party to the suit, in which the other was called as a witness, and did not extend to collateral proceedings between third parties."

But your Honor understands that this commentary was written in a state of the law where an idea that a party to a suit could himself be a witness was excluded by the mere fact that he was a party, and therefore it loses its pertinency.

In an action for wages, Chief Justice Lee, who was the eminent successor of Lord Hardwicke, refused to let the wife's confession of a receipt of £20 be given in evidence, saying:

"Husband and wife cannot be admitted to be witnesses for each other, because their interests are absolutely the same; nor against each other, because contrary to the legal policy of marriage."

Cord's Rights of Married Women says:

"The declarations of the wife are not evidence for the husband; and in an action for criminal conversation, the wife's confessions are not evidence for the husband."

Coke upon Littleton says:

"Note.—It hath been resolved by the justices that a wife cannot be produced either against or for her husband, *qua sunt duae animae in carne una*, and it might be a case of implacable discord and dissension between the husband and the wife, and a means of great inconvenience."

Espinasse says, N. P., 332:

"These [husband and wife] being one person in the consideration of the law, and their interest absolutely the same, they cannot be witnesses for each other, nor against each other, on account of its being likely to create disputes, and so against the policy of marriage." \* \* \* \* \*

"And this rule is founded on the policy of the law, and not on the ground of interest."

Gilbert on Evidence, after laying down the rule of exclusion as a corollary from the exclusion of the party, says of the contrary rule:

"Such a law would occasion implacable divisions and quarrels, and destroy the very legal policy of marriage, that has so contrived it that their interest should be but one; which it could never be, if wives were admitted to destroy the interest of their husbands, and the peace of families could not be easily maintained if the law admitted any attestation against the wife."

Gilbert again says:

"The rule of exclusion of husband and wife is grounded on the identity of interest on public policy. The former reason being assigned for not permitting them to testify for each other and the latter not allowing them to be called against each other."

Greenleaf, our own eminent commentary, says:

"Communications between husband and wife belong to the class of privileged communications and are therefore protected, independently of the ground of interest and identity, which precludes the parties from testifying for or against each other. The happiness of the married state requires there should be the most unlimited confidence between husband and wife; and this confidence the law secures, by providing that it shall be kept forever inviolable; that nothing shall be extracted from the bosom of the wife which was confided there by the husband. Therefore, after the parties are separated, whether it be by divorce or by the death of the husband, the wife is still precluded from disclosing any conversation with him: though she may be admitted to testify to facts which came to her knowledge by means equally accessible to any person not standing in that relation."

And he adds again:

"This exclusion [that of husband and wife] is founded partly on the identity of their legal rights and partly on principles of public policy, which lie at the basis of civil society. For it is essential to the happiness of social life, that the confidence subsisting between husband and wife should be sacredly protected and cherished in its most unlimited extent."

Kent says (2 Kent's Comm., 178):

"The husband and wife cannot be witnesses for or against each other in a civil suit. This is a well settled principle of law and equity, and it is founded as well on the interest of the parties being the same as on public policy."

Peake on the "Law of Evidence" speaks of this relation as coming under a rule of this kind:

"We are now to consider those who stand in a different situation, and are excluded not by reason of any disability, but on account of higher duties, either domestic or public, binding them to silence."

"It has been before mentioned, that no one can be a witness for himself; and it follows of course that husband and wife, whose interests the law has united, are incompetent to give evidence of each other, or any other person whose interests are the same; and the law, considering the policy of marriage, also prevents them from giving evidence against each other; for it would be hard that the wife, who could not be a witness for her husband, should be a witness against him; such a rule would occasion implacable divisions and quarrels between them."

And again :

"The rule of law does not merely prevent a husband or wife from giving evidence for the purpose of criminating each other; it goes much further, and precludes any evidence which has the *least tendency* to it, or which directly prejudices the civil rights of each other. Neither in a civil action, nor a criminal prosecution, are they permitted to give any evidence which, in its future effects, may criminate each other; and this rule is so inviolable, that no consent of the other party will authorize the breach of it."

Phillips on Evidence supports the rule, placing it upon the same principles I have stated:

"The reason for excluding the husband and wife from giving evidence, either for or against each other, is founded partly on their identity of interest, and partly on a principle of public policy which deems it necessary to guard the security and confidence of private life, even at the risk of an occasional failure of justice. They cannot be witnesses for each other, because their interests are absolutely the same; they are not witnesses against each other, because this is inconsistent with the relation of marriage."

And Reeves, in his "Domestic Relations," and other commentators, says on that relation that the removal of the disqualification of interest does not affect the first-mentioned reason, because, when one is called for the other, either examination might bring out facts making for or against the other. Reeves says distinctly:

"It is a rule of law that husband and wife cannot be witnesses for or against each other. This is peculiar to the relation of husband and wife." \* \* \* \* "The principle of the rule arises from that anxious solicitude which the law discovers to preserve domestic tranquillity." \* \* \* \* "In the case of husband and wife, if the husband and wife and their antagonist all agree that the wife may be a witness, the law interferes and prevents it. This shows that it is not because the wife is interested that she is prevented from being a witness; for the right of the opposite party to object to an interested witness may be waived; but to suffer such a waiver in the case of a husband and wife has a tendency to disturb that domestic tranquillity which is so desirable; and, therefore, the law forbids it."

In the quaint language of 2 Rolle Abr. [686]:

"A married woman cannot be a witness for or against her husband, inasmuch as they are one in law, and inasmuch as 'displeasure' can arise between them, or perjury, or other great 'inconvenience.'"

In Scholer's Domestic Relations [2d Ed.], published in 1870, this principle is insisted upon and enlarged, and Starkie in his Evidence says [page 103]:

"On grounds of public policy it is a general rule that the husband and wife cannot give evidence to affect each other, either, as it seems, civilly or criminally. For to admit such evidence, would occasion domestic dissension and discord; it would compel a violation of that confidence which ought, from the nature of the relation, to be regarded as sacred; and it would be arming each of the parties with the means of offense which might be used for very dangerous purposes."

On page 709 he adds :

"Where neither of them is either a party to the suit, or interested in the general result, the husband or wife is, it seems, competent to prove any fact, provided the evidence does not directly criminate the other, or, as it seems, involve the disclosure of some communication made by the other."

This matter of "criminate," as the authorities will show,

means not exposure to criminal justice, but to the imputations that carry opprobrium.

"Where a man or wife are divorced by Act of Parliament, a wife is not competent to prove a contract made by her husband previous to the divorce, because the confidence between a man and wife should be kept forever inviolable."

In Tyler on Infancy and Coverture [320, Ed. 1868, page 70], this same principle is laid down.

I will now offer your Honor some of the leading cases in the English law and in our own law and the law of our sister States. In Bentley v. Cooke (3 Dougl., 422), Lord Mansfield says:

"There has never been an instance, either in a civil or criminal case, where the husband or wife has been permitted to be a witness for or against the other, except in case of necessity, and that necessity is not a general necessity, as where no other witness can be had, but a particular necessity, as where, for instance, the wife would otherwise be exposed without remedy to personal injury. I think the husband was not a competent witness."

Now, the husband was there called by the defendant to prove the former's marriage to plaintiff, who had sued as a *femme sole*, and on his evidence she was nonsuited.

The case of necessity, as your Honor is aware, is where a wife is permitted in the criminal law to testify against personal violence; for otherwise the husband would be protected by the law against all sorts of personal and private injury to the wife in the absence of any other witness.

In Davis v. Dinwoody, 4 T. R. (678), Lord Kenyon says:

"Independently of the question of interest, husbands and wives are not admitted as witnesses either for or against each other. From their being so nearly connected, they are supposed to have such a bias upon their minds that they are not to be permitted to give evidence either for or against each other."

That was a case where neither husband nor wife were parties. And these two cases which I have just read of Lord Mansfield and Lord Kenyon are approved in 9th New-York, page 154.

Now, to show that divorce does not open the mouths of either party to the previous marriage, in the case of Munroe & Twisleton (Peake's Add't'l, Cas. 219), Lord Alvanley says:

"To prove any fact arising after divorce this lady [the divorced wife] is a competent witness, but not to prove a contract or anything else which happened during the coverture. She was at that time bound to secrecy; what she did [sic] might be in consequence of the trust and confidence reposed in her by her husband."

Now, that action was of this kind: Assumpsit for the board of an infant. She, who at the time of the transaction was defendant's wife, since divorced, was called as a witness to prove the contract. Lord Alvanley says:

"It shall never be endured that the confidence which the law has created while the parties remained in the most intimate of all relations, shall be broken whenever, by the misconduct of one party (for misconduct alone can have that effect) the relation has been dissolved."

And in the case of Doker and Hasler (Ryan and Moody, 198), Best, C. J., says:

"I remember that in that case [Monroe vs. Twisleton, Peake's Add't'l, Cas. 219], in which I was counsel, Lord Alvanley refused to allow a woman, after a divorce, to speak to *conversations* which had passed between herself and her husband



during the existence of the marriage. I am satisfied with the propriety of that decision, and I think that the happiness of the marriage state requires that the confidence between man and wife should be kept forever inviolable."

This was an action by an administrator for a false return to a *fi fa*. The defense was that the execution was fraudulently taken out to protect the goods of the testator against his assignee in bankruptcy. To prove this the testator's widow was called to testify as to a conversation between herself and her deceased husband, and the testimony was rejected.

In the case of *O'Connor vs. Majoribanks* [5 Scott's new 394; 4 Manning and Granger, 435]. In following *Monroe vs. Twisleton*, the Court (Tindal, C. J., Caltman & Maule, JJ.) says:

"A wife shall never give evidence either for her husband or against him; not for him, because their interests are the same; and not against him, because thereby dissension and dispute might arise in families. We are asked to confine our judgment only to cases of confidential communications; but I think that would be dangerous and inconvenient. It is either to abide by Lord Alvanley's judgment in the case of *Monroe v. Twisleton* [above]; that is the better and sounder doctrine."

In *Barbat v. Allen* [7 Exch., 609, S. C. 10 Eng. L. and Eq., 596], this case of *O'Connor v. Majoribank* was cited as holding that the rule of exclusion does not stand on the ground of the sacredness of conjugal communications, quoting Maule, J.:

"The rule can hardly stand upon that ground; but Pollock, C. B., says: 'I am not prepared to express an assent to those observations. The rule is, that so far as the law can respect those communications it does so, but it cannot do so in all instances where the husband and wife are not parties to the proceeding at all.'"

In *Stapleton vs. Croft* (21 Law Journal, N. S., Q. B. 247), it was held, Campbell, C. J., giving the opinion, though it was after Lord Brougham's act was passed, which introduced certain latitude for husband and wife, as the statute has it, that—

"The disqualification of husbands and wives rests not merely on the ground of interest, or union of incapacity, but one reason is to preserve the peace of families. Wightmans says the reason for excluding the evidence in question rests not merely on interest, but upon a much larger view of the relation existing between husband and wife."

Now, the New-York cases. I cite to your Honor *The People vs. Mercein* (8 Paige, 50) for some observations of Chancellor Walworth. This case your Honor will recollect. Chancellor Walworth says:

"The wife is prohibited from being a witness against her husband, upon the principle that the happiness of the married relation requires that perfect confidence should subsist between the husband and wife; so that he may freely communicate with her in relation to his business, and to all the various transactions of his life, in the full assurance that she can never afterwards be compelled, or even permitted, to give evidence against him to his injury, or as to any matters thus communicated."

This was a *habeas corpus* to relator's father-in-law, to bring before the Court relator's wife and child. The wife was said to be properly admitted to prove acts of cruelty by her husband towards her, but not his general character or any other misconduct.

Judge Neilson—Mr. Evarts, would it be agreeable to you to suspend at this point? It is now 1 o'clock.

Mr. Evarts—Quite so.

The Court then took a recess until 2 o'clock.

## SOME ENGLISH PRECEDENTS.

The Court met at 2 p. m., pursuant to adjournment, and Mr. Evarts resumed his argument.

Mr. Evarts—If your Honor please, I had been diverted to a line of authorities in our own country a little earlier than I should have done, and I wish to call your Honor's attention to a line of English cases of considerable importance on this general rule. I cite the case of the *King vs. Luffe*, in the 8th of East., 193. This was a case known to the English law and to our law as a bastardy case, the point being, as your Honor understands, to fix the responsibility upon a putative father and of a bastard child, in order to save the public from the expense that it otherwise would be put to. Those cases in form are of the King, or Crown, or the Parish, or some public representation against the putative father, so that your Honor sees that no party intervenes there to make a rule growing out of the question of who is party. The Parish is on one side and the putative father on the other, to whom the bastard child is to be attributed. And the question came up whether the mother of the bastard, being a married woman, the husband of the woman could be admitted as a witness to prove anything that tended to produce the conclusion of the adultery of his wife being the mother of this child, not by her husband but by the putative father; and one part of the proof for the public was to prove that this child, born of parents in wedlock, was not the child of the husband, but of the putative father, and one necessary link, or important link was or might be to prove the non-access of the husband to the wife during the period of gestation with the child; and the husband on the ordinary necessities or convenience of the law would be the natural witness to prove that incidental fact in the proof of his wife's adultery—his own non-access during the period to which the gestation was to be attributed. And it was held by the courts that the husband could not be admitted as a witness to prove non-access, and on the ground of the marital relation, that he could not be heard to furnish testimony that formed any part of the proof of the imputation of this grave criminality on the part of the wife. And I use the word criminality in regard to this fault, offense, or sin, because it is the language uniformly of the law, and of the law books, and does not turn at all upon the question whether adultery has been made by legislation—as it was not at common law, and is not at common law anywhere—a crime. In England it was not a crime. There was no criminal exposure by any such proof concerning the wife any more than there is in the State of New-York; but yet English Courts pass upon it in reference to this line of cases, and on this mere point of the non-access as provable by the husband, as excluded by that policy of the law that does not permit husband or wife to testify concerning one another, and to the prejudice of the other in matters of this nature, Lord Ellenborough says:

"Three exceptions have been taken to this order: first, that the wife was examined generally and alone to the fact of non-access, and that the order is founded on her evidence alone; whereas it is laid down in the cases that an order of this sort cannot be made on the evidence of the wife alone, but that there must be other proof of the non-access. This objection is grounded upon a principle of public policy, which

prohibits the wife from being examined against her husband in any matter affecting his interest or character, unless in cases of interest where, from the nature of the thing, no other witnesses can probably have been present; but exceptions of that sort have been used; and that it is necessary, and on that point allowable, to examine her."

Now, this case, dealing with the general proposition as applied to that line of cases, came up for consideration in another case. *The King vs. The Inhabitants of Kea*—the name of a town—in the 11th of East, 132.

"A woman cannot give evidence of the non-access of her husband and to bastardize her issue, though he be dead at the time of her examination as a witness, and therefore an order of sessions stated by that court to be founded in part upon credence given to her testimony of that fact, was quashed."

Lord Ellenborough, Ch. J., when this case was called on, said "that to hold this evidence receivable would be in direct contradiction to *The King vs. Reading*, and other cases, which were not meant to be overruled in *The King vs. Luffe*; the Court in that case intending that the wife had been examined only to those facts which she might legally prove, and not to the non-access of her husband. the principle of public policy precluding her from being a witness to that fact."

And the rest of the Court signified their concurrence in this opinion. Then the counsel argued that the difference was made because in this case, when the wife was called, her husband was dead, and they argued that point and said if the Court considered that the rule stood on the broad ground of general public policy affecting the children born during the marriage, as well as the parties themselves, they could not pretend to argue in support of the order. That is, if the difference that they sought to raise to the Court did not make a distinction, because the rule of the Court was upon the whole broad ground of public policy, they could not attempt to make that distinction.

"The Court unanimously assent to this, and *Le Blanc, J.*, added that they were bound on the statement of this case to notice the objection taken to the competency of the wife to prove the fact of non-access."

We cannot bring a book that we wanted from the library, but I refer your Honor and my learned friends to the case of *Pope agt. Pope*, 1st of *Moody & Ryan*, 269. It is a more modern case. In our own American reports is the report of the case of *The State v. Herman*, 13 *Iredell*, North Carolina Reports, 502, which sustains these English cases as being the law of this country. And the same principle in the case of *The State agt. Pettaway*, 3d *Hawks*, N. C. Reports. And a certain case of *Dennison v. Page*, 29 *Penn. State Reports*, 420, from which I read:

"A mother of a child born in wedlock, but begotten before, is incompetent to prove that the child was not begotten by the man who became her husband before the birth of the child, and in the absence of other evidence of non-access."

This is an important decision, if your Honor please, in which the whole doctrine is considered, and the conclusion is based upon this general proposition of the protection of marriage against any invasion by the administration of justice.

The case of *The King v. The Inhabitants of Cliviger*, in 2 *Durnford & East*, 133. There they say that a wife shall not be

called in any case to give evidence even tending to criminate her husband.

"In case of a settlement where a marriage had been proved between two paupers, the first wife of the husband is not a competent witness to prove a former marriage with him, because such evidence tended to show him to be guilty of bigamy."

It is not a bigamous marriage which he speaks of; it is an authentic marriage, which he is not permitted to prove, although the case was not of an indictment for bigamy, but only a case of settlement, raised in the general form that I have stated.

#### SOME AMERICAN PRECEDENTS.

There are some Virginia cases; the case of *Robin* and others, paupers, against *King*, in which the Court of Appeals of Virginia, the highest Court of that State, says:

"In a suit by persons held in slavery against their master to recover their freedom, the defendant claimed the plaintiffs as slaves by purchase of them as slaves from W. K. The plaintiffs offered K. K., widow of W. K., to prove that W. K. in his lifetime, before sale to defendant, repeatedly declared in presence of his family, and without injunction of secrecy, that the mother of plaintiffs, then held by him in slavery, was an Indian woman."

Which would negative the idea of the progeny being slaves, as your Honor understands.

"Held, the widow not a competent witness to prove such declaration of her deceased husband."

Though death had terminated the relation, yet the wife could not speak even of a matter of that kind, though it was not a question of any personal interest of hers or the estate.

Now, a very important case in the Supreme Court of the United States, is the case of *Stein vs. Bowman*, in the 13th of *Peters*, 209:

"It is a general rule that neither husband nor wife can be a witness for or against each other. This rule is subject to some exceptions, as when the husband commits an offense against the person of his wife. The husband and wife may be called as witnesses in the same cases, and if in their statement of facts they should contradict each other, that would not destroy the competency of either. It would not follow from such contradiction that either was guilty of perjury, and in some cases the wife may be a witness under peculiar circumstances where the husband may be interested in the question, and to some extent in the event of the cause."

Now the peculiar circumstances of this case will strike your Honor.

"The wife cannot be a witness to criminate her husband, or to state that which she has learned from him in their confidential intercourse. The rule which protects the domestic relations from exposure, rests upon considerations connected with the peace of families, and it is considered that this principle does not afford protection to the husband and wife while they are at liberty to invoke it or not at their discretion, when the question is propounded; but it renders them incompetent to disclose facts in evidence in violation of the rule. The husband [as in this case] being dead, does not weaken the principle. It would seem rather to increase than lessen the force of the rule."

Now, the matter to which the wife was brought as a witness after her husband's death, in behalf of one of the parties against whom her husband had testified, was a suit in which the husband during his lifetime has testified and now is dead, and the wife was adduced as a witness to contradict those statements of the husband, and to show that the transaction was not as he represented.



ed it, but was a fraudulent transaction—to his knowledge, I mean. Mr. Justice McLean delivered the opinion of the Court, and all the learned Justices, which included at that time the late eminent Chief-Justice Taney, Judge Story, Mr. Justice Thompson of our State, Judge McLean, Judge Baldwin, Judge Wayne, Judge Barbour, Judge Catron and Judge McKimley—and the Court was filled with those eminent Judges—establish the proposition in its fullest extent, and upon the principles of the interest of society lay down so extensive a rule as to exclude the wife under the peculiar circumstances that I have stated.

“The law does not seem to be entirely settled how far in a collateral case a wife may be examined on matters in which her husband may be eventually interested. Nor whether in such a case she may not be asked questions as to the facts that may in some measure tend to criminate her husband, but which afford no ground for the foundation for a prosecution. The decisions which have been made upon these points seem to have been influenced by the circumstances of each case, and they are somewhat contradictory. It is, however, admitted in all the cases that a wife is not competent, except in cases of violence upon her person, directly to criminate her husband or to disclose that which she has learned from him in their confidential intercourse.”

He then alludes to analogies that have been involved upon the relations of attorney and client:

“The rule which protects an attorney in such a case is founded upon public policy; and may be essential in the administration of justice. But this privilege is the privilege of the client and not of the attorney. The rule which protects the domestic relations from exposure rests upon considerations connected with the peace of families; and it is conceived that this principle does not merely afford protection to the husband and wife which they are at liberty to invoke or not at their discretion when the question is propounded. But it renders them incompetent to disclose facts in evidence in violation of the rule. And it is well that the principle does not rest on the discretion of the parties. If it did, in most instances it would afford no substantial protection to persons uninstructed in their rights and thrown off their guard and embarrassed by searching interrogatories.”

“In the present case, the witness was called to discredit her husband, to prove, in fact”—

That is not in issue; but to prove, in a suit in which her husband had testified, contrary testimony, that he had sworn falsely—if she was to be believed, of course. There was a contradiction between them.

“To prove in fact that he had committed perjury, and the establishment of the fact, depended on his own confessions, confessions which if ever made were made in all the confidence that subsists between husband and wife. It is true the husband was dead (of course he could not be indicted or tried) but this does not weaken the principle. Can the wife, under such circumstances, either voluntarily be permitted or by force of authority be compelled to state facts in evidence which render infamous the character of her husband?”

That is the proposition upon which it turns—“to render infamous the character of her husband.”

“We think most clearly that she cannot be. Public policy and established principles forbid it.”

“The rule is founded upon the deepest and soundest principles of our nature, principles which have grown out of those domestic relations which constitute the basis of civil society, and which are essential to the enjoyment of that confidence which should subsist between those who are connected by the

nearest and dearest relations of life. To break down or impair the great principles which protect the sanctity of husband and wife would be to destroy the best solace of human existence.”

Judge Gaston, whose repute is well known to the lawyers of our country, a celebrated North Carolina Judge, in the case of the State *v.* Curen Jolly, in the 3d of Devereux and Battle's Reports, 110, says:

“The husband, even after divorce, not competent to prove the adultery of his wife on her prosecution therefor.”

The next case in New York that I ask your attention to is that of *Babcock v. Booth*, 2 Hill, 181, where the opinion is given by Judge Bronson. The Court says:

“It is sound policy to exclude the wife whenever she is called either against the husband or his representative, and asked to disclose any fact which came to her knowledge in consequence of the intimate relation which once existed between herself and her husband.”

The decision below was reversed for admitting the testimony of a widow in behalf of the defendant in a suit by her husband's administrator, so far as it applied to statements made by the husband to her alone concerning the subject of the controversy. In *Burrill v. Bull*, 3 Sandford, Ch. 15, Vice-Chancellor Sandford lays it down that by *O'Connor v. Majoribanks* (6 Lond. Jur., 509; S. C. 5, Scott's New Rep., 394) the case that I read to your Honor from the King's Bench:

“The rule was established on consideration that husband and wife should not be witnesses either for or against each other in civil cases; and, that without regard to the circumstance whether the fact came to them confidentially or otherwise, neither could be permitted, even after the marriage terminated, to testify concerning what transpired between them during the marriage, or came to their knowledge by reason of the relation of husband and wife.”

In the case of *Hasbrook v. Vandervoort*, 9 N. Y., 153, the action involved the wife's separate estate, but she was not a party to the record, though having an interest in the result of the suit. Her husband was offered as a witness. Held, that although his wife would be competent as a witness by reason of the incompetency of interest having been removed by the Code, the husband's incompetency was not removed. It is the settled rule in this State that the husband's incompetency rests on the marriage relation and not on interest.

“A husband is not a competent witness for or against the trustee of his wife's separate estate, in a suit between the trustee and a third person in relation to the trust estate. The principle which excludes the testimony of husband or wife, where the other is a party or interested in the suit, depends merely upon the relations existing between the witness and the party, and not at all upon the interest of the witness in the event of the suit.”

Judge Johnson, of the Court of Appeals, delivers the opinion of the Court, and goes through the text-books and the authorities, and, as I understand them, affirms the rules of law as existing in this State, as the common law, as being the same as those that I have stated. The true ground of the rule is also stated in the cases that I have just read from the American Reports.

“Upon them all it is entirely clear that the rule of the exclusion of husband or wife, where the other is a party or interested in the event, depends merely upon the existence of the relation, and not at all upon the existence in the party offered as a wit-

ness, of an interest in the event independent of that which the law could attribute to him by reason of the marriage relation."

The argument here was that our law having changed the rule of evidence that excluded interested witnesses, that the old rule of excluding a witness brought as this wife was proposed to be, rested on the ground of interest in the witness, and the Court exclude that idea and say no.

"The rule that excluded husband and wife in this regard was part of the rule of the institution of marriage, and the change of the rule in respect of interest as affecting witnesses in general, or parties in general, does not touch that relation, and the witness is still excluded."

"In any trial or inquiry, in any suit, action or proceeding, in any court, or before any person having by law or consent of parties authority to examine witnesses, or hear evidence, the husband or wife of any party thereto, or of any person in whose behalf any such suit, action or proceeding is brought, prosecuted, opposed or defended, shall, except as hereinafter stated, be competent and compellable to give evidence the same as any other witness on behalf of any party to such suit, action or proceeding."

Now, that section in terms, if the subject matter of the suit did not otherwise dispose of the question and make it unimportant, that section, in terms, would not admit Mr. Tilton, but would admit Mrs. Tilton, because Mr. Tilton is not the husband or wife of any party to this suit, but Mrs. Tilton is the wife of a party to this suit, to wit, the plaintiff. Now, in letting in the husband and wife there nevertheless was a statutory restriction upon the latitude of the evidence that should be allowed from either; and that I will read, if your Honor please, which is the third section, before I call attention to the second. I was saying, if your Honor please, that the enabling section which I have read, which lets in husband or wife in certain judicial inquiries is, nevertheless, limited; and I first call attention to the limitation before I consider the second section, which shows that this statute has no application to this case. Where they are competent and compellable, it is provided:

"No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage."

So, there your Honor perceives, even in case where they can be used as witnesses, there is a limitation upon the largeness of their testimony; and, though it would not strike a legal reasoner as very satisfactory that the limitation should be simply that a husband or wife should not be compelled to disclose confidential communications, and leave it therefore that they might volunteer, yet there is an attempt on the part of the Legislature to furnish a rule that protects to a certain extent the sacredness of confidential communications. Now, that act, and that act alone, has disturbed the rule of the common law on the subject of the admissibility of this witness, Mr. Tilton, here; and the reason that it has disturbed it is by the clause or section of exclusion—of the alteration of the statute upon a case such as is now pending before your Honor. And that is found in the second section:

"Nothing herein contained shall render any husband or wife competent or compellable to give evidence for or against the other in any criminal action or proceeding, except to prove the fact of marriage in case of bigamy, or in any action or proceeding instituted in consequence of adultery, or in any action or

proceeding for divorce on account of adultery, except to prove the fact of marriage, or in any action or proceeding for or on account of criminal conversation."

The Court conclude that:

"In consideration of the witness being incompetent at common law, and not upon the ground of interest in the event, he must remain incompetent until some statute shall remove that ground of incompetency."

#### SPECIAL REASONS WHY TILTON SHOULD NOT TESTIFY.

Now, a statute was passed in 1867 which opens the testimony of husband and wife to a certain extent and in certain cases. The report which I now read from arose after the passage and taking effect of that statute, the 49th New York reports, the case of Southwick vs. Southwick, page 510. It was an action brought by plaintiff against her husband to recover an alleged balance of moneys in his hands belonging to her separate estate and received by him as her agent. The defense was payment. On the trial, the defendant offered himself as a witness in his own behalf. The plaintiff's counsel objected that he was incompetent. There your Honor sees it was a mere money interest between husband and wife, in which the wife sued and the husband defended on the ground of payment and offered himself as a witness. Now, as I understand from an examination of this case, the competency of the witness for the evidence for which he was called was within the allowance of this statute, and the question was whether the principle by which death or divorce excluded at common law just as thoroughly as the continuance of the marriage relation excluded such testimony, whether this statute could be considered as letting in evidence arising in the course of a marriage, which evidence arose prior to the passage of the act. That was the solitary point there to be decided, and of course I do not cite the case for that purpose, because that is not pertinent here; but as a necessary foundation for the judicial determination of whether the witness there was excluded or not, it became necessary for the Court to determine what the rule of common law anterior to the Statute of 1867 upon this point was, and whether it did rest entirely and thoroughly not upon interest, but upon the marital relation. And they examined, therefore, this line of cases to which I have called your attention, even more particularly, perhaps, than the Court had had before them—had under view. And as I understand this case, it determines that the common law of this State, up to the time that this decision is given, is the common law as I have given it in the English authorities, and would exclude and does exclude any evidence of a husband bearing against the interest or character of his wife, or of the wife against the husband, as well as any question involving the interests of one or the other; and then the question was what had this Statute of 1867 done in reference to this relation of husband and wife and the introduction of either as a witness in a controversy in which the character or the interests of the other were concerned, and they held that the proposition of the appellant, that this Statute must be considered as enabling only for concurrences in married life subsequent to its date is untenable; that the common



law, until changed, excluded upon the grounds of policy, but that the Statute of 1867 had changed the common law in its application to that case. We thus have the highest authorities of our State sustaining the proposition that, until Statute changes the common law rule applicable to a case of this kind, it remains the law of this State that a witness proposed as this one is must be excluded.

Now, at common law no party could be a witness, no formal party to a suit could be a witness. And in a large number of cases in which this question might have arisen, but for the fact that the witness was a party, it could not arise because the common law swept out at once all parties as witnesses. Our code has now put the matter of parties [and I think my learned friends will not question my proposition] simply upon this ground; that the party is not, from the fact of being a party, to be excluded as a witness, and the question when a party is called is the same as to his exclusion, as it would be if he were not a party. There is nothing, therefore, in that that changes the rule of the common law in this regard. Mr. Tilton is no more admissible for being a party here, than he would be if he were not a party. Then came the Act of 1867, which was intended to moderate and qualify, on matters of interest, the exclusion of husband and wife. For when the practice that interested witnesses should no longer be excluded came in, all efforts to introduce husband and wife on the ground that their exclusion rested on interest, failed before the courts, for they said: "No, it rests upon the marriage relation." Now, our legislation has varied the rule of the common law, and with specific intent to liberalize the production of evidence from husband and wife in matters in which they are concerned. That enactment is found in the Session Laws, second volume of laws of 1867, page 2221. It is a brief law: your Honor, of course, has had it before you repeatedly.

The law stands, then, on the rule of evidence upon the common law; for the statute, with wise respect to the nature of the inquiry, has seen that no public policy could tolerate the admission of evidence of either party against the other in that inquiry, to any extent whatever, and that any careless expectation of legislation that you could introduce into such issues and such controversies, the testimony of either, and expect to limit, or reduce or confine it by any rule of protecting what was confidence, or excluding what was criminating, would be a vain and illusory effort that would leave both the marriage relation and the administration of justice in equal disgrace and danger. We have now this state of things, and I need only ask your Honor's attention to the decision of the General Term of the Supreme Court of this State in the Fourth Department, since the passage of this act, and in a *crim. con.* case—the case of *Dann v. Kingham*, in the first of New York Supreme Court Reports, page 492. Now, the single fact to which the plaintiff was proposed to be called as a witness in this case of *Dann and Kingham* (a plaintiff standing as Mr. Tilton stands here), was to prove the marriage between him and his wife. That is not a question arising in the confidence of marriage. A marriage is always celebrated in the face of the Church and the world; therefore, the proof of that fact did not come within any reason

or any rule of exclusion from its arising in the confidence of marriage. It happened to be a very grave, practical question for the plaintiff. The marriage, we may suppose, was in common or humble life, and had occurred before a Justice of the Peace, and doubtless without any troops of attendants and friends; and the Justice of the Peace was dead, and the record or certificate which the law requires, and permits to be authentic when conformed to law when produced, was found to be defective, and it could not be used; and the plaintiff stood apparently as the witness that must prove the marriage, or it could not be proved at all, and he offered to prove it, and by the rules of the common law, aside from the marriage relation, he, of course, was a good witness: it occurred in his presence; he was attending to the subject, and knew all about it. He was excluded, and every effort of counsel, either arguing upon a change of policy, or upon statutory efficacy of the legislation of 1867, by which this witness could be called for that single fact and act, was overruled by the Court; and although this statute had expressly provided that in a prosecution for bigamy the first marriage might be proved by the husband or wife, and that in an action of divorce, though the parties were excluded for every other fact, they could be admitted to prove the fact of the marriage that was sought to be dissolved, as no such saving right had been applied by the Legislature to the action of *crim. con.*, though doubtless the same reason might apply. The Court could find no change in the common law as applicable to an action of *crim. con.*, produced by the statute books of the State of New York. We are unable, if the Court please, to see any pretense that by the statutes of New-York Mr. Tilton is made competent. We see nothing to shake the proposition that by the common law of this State, if this action had been pending and he had been called before the passage of that statute, he could not be a witness, and he stands in the same position now.

#### A QUESTION OF LAW, NOT OF FAIRNESS.

Now, it may seem, if the Court please, that there is some notion of fairness in respect to the testimony pro and con. in this case, that the plaintiff might reasonably expect to be admitted as a witness if the defendant is. The difficulty is that he is tied by rules of law that relate to him and sustain against his will his loyalty to marriage and the wife, and in order that all other men may know that loyalty to marriage and the wife or husband reciprocally is a part of the law of our land not determinable by the caprice or will, vicious or benevolent, of any particular witness. But in a larger sense from how inequitable a change of law that should disturb the marriage relation in its sanctity, and should open the mouth of the husband and close that of the wife. What precludes Mrs. Tilton from being a witness in this suit? Is she to prove any disgrace upon her husband? None. Is she to prove any peril or ruin to her children? None. She is to testify against the money interest of this plaintiff in his action for damages from this defendant. She would uphold everything great and dear and permanent, but she affects the money recovery and the common law excludes her on that ground, and no change of the statute has introduced her. And yet it is sup-







*Rupen A. Pym.*

posed that the common law that shuts the mouth of the witness who knows the truth, and whom the law presumes innocent until she is proved guilty, says she cannot defend herself because she is the wife of this husband, and he can destroy her because he is the husband of this wife. I apprehend the common law has been guilty of no such folly since its foundations were laid, and on this, if your Honor please, we submit the proposition.

MR. EVARTS CONTROVERTED.

Gen. Roger A. Pryor, of counsel for the plaintiff, answered the argument of Mr. Evarts. His remarks were apparently as full of quotations of authorities sustaining his views of the question as were those of his opponent. He occupied the remainder of the session, and will resume his argument on Friday morning.

ARGUMENT OF MR. PRYOR.

Mr. Pryor—If your Honor please, I speak to the Court on a dry, technical question of law, and, accordingly, I shall adhere strictly to the point in dispute, and shall urge no topic which, in my judgment, does not bear directly on the solution of the problem. The question in its simplest form is this: Is a plaintiff in an action of criminal conversation a competent witness on his own behalf? Now, Sir, it is not pretended on this side that at common law the plaintiff would have been a competent witness. The common law, proceeding upon the hypothesis of the depravity of human nature and its inability to resist any the least solicitation of interest to speak falsely, arbitrarily and peremptorily excluded from the witness box all interested in the event of the cause, and, by consequence, the parties, the very persons who from the necessity of the case were most familiar with the facts in controversy, and most competent to shed light upon the litigation, were made incompetent to testify. These unphilosophical and mischievous ideas were exploded by the writings of Jeremy Bentham, who propounded and inculcated the principle that all persons should be admitted to testify, without respect of character or condition, and that their trustworthiness should be submitted to the discrimination of a jury; in other words, he promulgated the principle of credibility as a substitute for the old common law principle of competency. Nor, Sir, was it long before these speculations of the enlightened reformer were incorporated in the practical jurisprudence of Great Britain. In 1843, by Lord Denman's act, the disability to become a witness, arising from interest and infamy, was abrogated. In 1851, by Lord Brougham's act, the incapacity growing out of the relation of a party to a cause was removed; and in 1853, by Lord Campbell's act, the incompetency of coverture was abolished. Impelled by the same principle, and running along the same line, and by the same stages to the same end, was the legislation of this State. Hence, in 1846, by constitutional ordinance, the incapacity to be a witness arising from defect of religious principle was abolished. In 1848, the incompetency of interest was abolished. In 1857, the incompetency of a party to the action was

abolished. In 1837, the incompetency arising from the relation of husband and wife to testify for and against each other was abolished; and subsequently we have attained in this enlightened and humane course, to the degree that now a criminal, indicted, is admitted to testify on his own behalf. I cite this course of legislation, if your Honor please, not in a vain display of information, but as showing that both speculatively and practically, both in the teachings of philosophers and in the acts of legislatures, the barbarous policy of incompetency has been removed, and in its stead the principle has been deliberately adopted by England and this State, that the question of evidence is determined by the more enlightened criterion of credibility.

Now, Sir, I have said that in 1857 an act was passed by the Legislature of New-York removing the incapacity to testify growing out of the relation of a party to the cause. The phraseology of that enactment is material to the present discussion;

"A party to an action or proceeding may be examined as a witness in his own behalf the same as any other witness," with certain exceptions not relevant to this inquiry or to this cause. You observe the phraseology—"A party to an action or proceeding may be examined as a witness in his own behalf, the same as any other witness." The terms of this statute, meanwhile, have been subjected to successive modifications, but, observe, never to the intent or to the effect of restricting or narrowing its operation, but always with the obvious object and irresistible result of enlarging and amplifying its consequences and efficacy. Hence, whereas the Act of 1857 merely admits a party to testify in his own behalf, by a subsequent alteration of its language, he was made compellable to testify against himself; and now that statute, that enactment, transferred to another section of the code, reads in these large terms:

"No person offered as a witness in any action or proceeding in any court, or before any officers acting judicially, shall be excluded by reason of his interest in the event of the action or proceeding, or because he is a party thereto."

This is the law which governs this case. This is the charter of this plaintiff's privilege and prerogative to tell in this action his own sad story of wretchedness and wrong.

Now, Sir, come back to the Act of 1857. Soon that Act, innovating upon the traditional principles of the common law, and so doing affront to all the prejudices of the profession, albeit so plain and unequivocal in its phraseology, was subject to discussion and to judicial construction. A series of cases were decided determining the meaning and effect of this Act of 1857, and which I beg to cite to your Honor. The question was this: although a party to the action may testify for himself, although the Act of 1857 did remove the disability upon a party to the action, the question under discussion and propounded for judicial construction was this: did the act have an *ultra* effect beyond that of removing the disability of a party, and did it operate to enable a party to testify not merely for himself, but for wife or husband, as the case may be? On the one side it was contended that the effect of the Act merely was to legalize and legitimate a party to the action as a wit-



ness, and that it was not the intent of the Legislature nor the effect of its enactment to accomplish this ulterior purpose, namely, to break down another distinct and special ground of incompetency, that of coverture. Now, Sir, it was upon that question that the decisions to which I beg to invite your Honor's attention were cited. The first, the case of *Potter vs. Marsh* (30 Barb., page 506, Supreme Court Decision in 1860) was an action of slander against husband and wife, for defamation of plaintiff by defendant's wife. Both defendants offered themselves as witnesses; first each in his and her own behalf; and, secondly, each for the other. The witnesses were excluded and plaintiff had a verdict. The case was appealed to the General Term, and the ruling of the Trial Judge reversed. The question, argued and adjudicated at General Term was, whether married persons, when properly parties to actions, are competent witnesses. The decision of the General Term sustained their competency, and this decision was affirmed by the Court of Appeals in 1863, as appears by reference to 24 Howard, 610, note. Not only was this decision of *Potter vs. Marsh* affirmed in the Court of Appeals, but was subsequently cited with approbation and recognition in the case of *Wehrkamp vs. Willett* (4 Abbott, Court of Appeals decision); a case reported also in 1st Keys.

In this case of *Potter vs. Marsh*, occurs the language which I beg to reproduce, because it answers much more logically, much more decisively, and with a greater weight of authority than I could pretend to, a large portion of the learned gentleman's argument. The Court says:

"But in this case, the defendants were offered as witnesses in their own behalf, as well as for each other. If the rational and common law rule for excluding husband and wife was based solely upon the union of interests created by the marital relation, that disqualification having been removed, it was that the parties to the record, the defendants in the case, were admissible as witnesses for each other. But whether the common law rule stood alone upon the grounds of interests or not, being parties to the record, and necessarily so, they are most certainly competent as witnesses in their own behalf."

Such is the letter and such is the spirit of the enactment.

"A party to an action or proceeding may be examined in his own behalf same as any other witness."

Then the Court proceeds and says:

"No limitation, no qualification, no restriction is imposed by the law-making power. What right then has the Court to fritter away, by judicial construction, the plain letter of the statute, to make an exceptional case, when one party shall be deprived of the benefit of his own testimony, while his opponent is permitted to testify? Clearly none,"

—said the Court.

*Barton vs. Gledhill*, (12 Abbott, old series 246, New-York Common Pleas), decided in 1861. The action was by husband and wife, against husband and wife, for slander of plaintiff's wife by defendant's wife. Each plaintiff offered himself and herself as a witness, in his and her own behalf, and were rejected. Held, that Section 399 of the Code (1857) permitted husband and wife, though the husband or wife of a co-party, to testify in his or her own behalf. Section 399 of the Code is the Act of 1857. Your Honor will observe, ~~it~~ is here held, that Section 399 of the Code permitted the

husband or wife, though the husband or wife of a co-party, to testify in his or her own behalf.

*People vs. Chamberlain* (23 N. Y., 85, Court of Appeals, 1861) was an indictment for perjury against a husband who swore in an action of divorce that he had no intercourse with his wife, the defendant. Held, that under Section 399 of the Code (1837), a husband, party to the action, was a competent witness against his wife, party to the action, and *vice versa*.

*Hooper vs. Hooper*, (43 Barb., p. 297, Supreme Court, 1865) was an action by plaintiff against defendant, and wife for assault and battery by defendant's wife. Defendant's wife offered herself as a witness in her own behalf, and was excluded. Held, error; for by Section 399 of the Code (1857), the wife, *as*, and *because* a party to the action, was a competent witness in her own behalf, although joined as defendant with her husband. Now, Sir, what said the Court in this decision of *Hooper vs. Hooper*? They say this: "What did the Legislature intend by this amendment of the law of evidence?" referring to the Act of 1857 as amended.

"Did it intend by the words 'a party to an action,' a special or particular class of parties—parties who had nominal or real interests—parties who were *feme sole* or *femes covert*, the latter sued with or without their husbands? If we accept what the Legislature has said in very plain, concise, and unequivocal language, as an indication of its meaning and intention, we must adopt the conclusion that the disability to give evidence in one's own behalf is removed from all who may become or be made parties to actions and proceedings. If it was intended to include all parties, and extend to them the amendment, what other or better language could have been employed to signify such intention? I submit that none more appropriate or significant could have been employed. And if it was designed to perpetuate the disability of a particular class of parties—married women, sued or suing in conjunction with their husbands, I submit the Legislature would have said so in words, and not left it to inference and implication. When the Legislature speaks in plain, precise, positive and unambiguous terms, the courts are bound to accept what they have said for what they intend, rather than to seek an intention at variance with their expressed language in reasons and causes which, however cogent and controlling they may appear to us, may never have occurred to or influenced them. The framers of this amendment knew, quite well, that married women with their husbands were, in numerous cases, necessary and indispensable parties to legal proceedings, and without whose presence upon the record complete and adequate remedies could not be administered. And it is reasonable to think that if this numerous class were to be excepted from the effect of the radical innovation in the old law of evidence, the Legislature would have signified such intention in so many words."

*Hall vs. Hall*, 30 Howard, page 59, shows that husband or wife, parties to the action, are not competent witnesses for or against each other, yet still in such case each is admissible to testify in his or her own behalf.

*White vs. Stafford*, 85 Barber, page 419, rules that a wife, not a party to the action, was not then a competent witness for the husband; but that under section 399 of the Code, the Act of 1857, all parties to an action are competent in their own behalf.

*Card vs. Card*, 39th N. Y. Reports, page 317, holds that section 399 of the Code makes "a party to an action a competent witness

In his own behalf, though associated on the same side with his wife as a party." (Opinion by Woodruff, J.)

Also, see *Shirley vs. Vail*, 30th Howard, page 407, Court of Appeals, per Grover, J.

*Smith vs. Smith*, 15th Howard, page 165, was a suit by a wife for divorce, on the ground of adultery, and the plaintiff was admitted as a witness. Held, error; for the Act of 1857 qualifies parties to an action as witnesses, yet, it does not enable husband or wife to testify one against the other, in an action between them.

In *Maverick and wife against the Eighth-avenue R. R. Co.*, 36th N. Y. Reports (1867), it was held that "the husband, as a party, was a competent witness for himself, though suing jointly with the wife. The language of the Court there is extremely applicable and cogent upon the present discussion; but I do not mean to detain your Honor with a full production of it.

*Wehrkampt vs. Willett*, 4 Abbott, Court of Appeals decisions, page 548 (1867), was an action by a wife against the sheriff for levying on her goods under an execution against the husband. The contention was, that as the sheriff claimed the goods as the property of the husband, the husband was virtually a party to the action, and so plaintiff, the wife, was disabled to testify in her own behalf.

At page 558, Mullen, J., says—a single paragraph I cite :

"By section 399 of the Code it was provided that a party to an action, or special proceeding, may be examined in his own behalf or in behalf of any other, in the same manner and subject to the same rules of examination as any other witness. This statute makes every party a competent witness. There is no exception; and the courts have no power to create exceptions to the operations of statutes, unless the exception is necessary to prevent injustice, or obviously at war with the intention of the Legislature that it should be excluded."

*Carpenter vs. White*, 46 Barbour, page 292 (1866), decides that in an action of *crim. con.* the wife is an incompetent witness, not being either nominally or really a party to the action. In such action, the husband is the only party in interest.

*Babbott and wife vs. Thomas*, 31 Barbour, page 277 (1859), was an action by husband and wife to cancel a bond and mortgage and to restrain the foreclosure of the mortgage. The husband offered himself as a witness to prove usury in the consideration. Held, that the husband was a competent witness in his own behalf, notwithstanding the wife's interest in the event of the suit, by reason of her inchoate right of dower in the mortgage premises.

In *Schaffer vs. Renter et al.*, 37 Barbour, page 44 (1862), it was ruled that, when husband and wife are co-defendants, she is a competent witness in her own behalf.

In *Matteson vs. N. Y. C. R. R. Co.*, 62 Barbour, page 364 (decision in 1862), affirmed by the Court of Appeals, 35 N. Y. page 487, it was held that husband and wife are competent witnesses for and against each other in all cases where they are parties to the action.

*Shoemaker vs. McKee* (Supreme Court 1860, G. T.), 19 How: 86—was an action by a judgment creditor against husband and wife to set aside a fraudulent conveyance from the husband to the wife. The defendant, wife, offered herself as a witness in her own behalf and admitted. Held, no error—because, under

section 399 Code, as a party to the action, she was a competent witness in her own behalf, though joined with her husband.

#### DEDUCTIONS FROM FORMER DECISIONS.

Now, Sir, what is the result of this line of decisions—decisions emanating not only from the courts of primary jurisdiction, but ratified and affirmed by your tribunal of last resort? What one principle is there—even when those courts differ upon another question—what one principle is there that stands out salient and uncontested? It is this: That a party to an action, being husband or wife, in every and in any action, when the husband and wife is not also a party to the action on one side of the record or the other; that then, in all these cases, that party to the action, he or she, husband or wife, is a competent witness in her own or his own behalf. And I challenge my learned adversaries, with all their extraordinary and admirable research, to find in the reports of this State, since the Act of 1857, one solitary decision which says that a wife or a husband, party to the action, testifying not for or against husband or wife, party to the action, that the husband or wife, when a party to the action, is incompetent to testify, when the husband or wife, as the case may be, is not likewise, and also a party to the action. Now, Sir, we have then this rule, this principle, peremptorily and imperatively established in the jurisprudence of New York, namely, that any person and every person, in any and every action, is entitled—because he is a party, and merely because he is a party—is entitled, has the right *quâ* party, because a party, and in consequence only of being a party—is entitled to be admitted to the witness-box and to testify in his own or her own behalf, provided he does not testify, or she does not testify for or against the husband or wife, likewise a party to the action. Now, I challenge a solitary decision in the Courts of this State since that time, in contravention of this rule, stating it, as I do, with its proper limitations and qualifications.

Wherefore, Sir, by virtue of this enactment of 1857, subsequently altered and modified down to 1860, in the phraseology in which it presents itself to us now and controls this case; wherefore, we say this plaintiff in this action is a competent and admissible witness.

But we arrive at the same conclusion by another process of reasoning. The law upon the subject as it now stands is in these words :

"No person offered as a witness in any action or proceeding before any Court or before any officer acting judicially, shall be excluded because he is a party thereto."

You observe the change in the phraseology of the statute from what it was in 1857. None shall be excluded "because of being a party to the action."

Now, Sir, this plaintiff presents himself, a party to the cause in an action of criminal conversation. At common law, as I have already shown indisputably, he would not have been a competent witness; and why not a competent witness at common law? Merely, solely and exclusively because he was a party to the action. That was the only disability which incapacitated him, and repelled him at common law from the witness box. So when the Legislature say that no party shall be excluded from the witness box because he is a party,



then there is no other obstacle intervening between the plaintiff and his testimony in this case. In England they have a statute known as Lord Campbell's Act. That statute, like this, removed the disability of a party to the action to testify. Now observe, if your Honor please: "Removed the disability of the party to the action," and that is all it accomplished. It did not go further; but they added an exception that a plaintiff in an action of criminal conversation should not testify; showing plainly that when they removed the incompetency of a party that the plaintiff in an action of criminal conversation would be competent and admissible as a witness. Hence, the necessity of an exception repelling him from the witness box. There is no resisting that argument. If the removal of the disability of a party did not admit the plaintiff in an action of criminal conversation as a competent witness, then there was no occasion for that exception, and when they make a peremptory and positive exception to that enactment, to the effect that a plaintiff in an action of criminal conversation, should not testify in his own behalf, they concede that when you remove the disqualification of a party to the action, necessarily the plaintiff in an action of criminal conversation would be a competent witness. And, in effect, so says Judge Wright, I am compelled to hurry along so rapidly, I am almost afraid I do not make myself very clear.

Judge Neilson—Take your time.

Mr. Pryor—I say Judge Wright, in the case of *Wehrkampt vs. Willett*, admits the same principle. Pardon me, that was an action of conversion by a wife against the Sheriff for levying on her property under an execution against the husband. She was admitted to testify, which was claimed on the part of the appellant as being error, and he carried the case to the Court of Appeals, and his argument was this: Granted that the effect of the Act of 1857—this is the appellant's argument—was to permit any party to any action to testify on his own behalf, yet a husband, for instance, cannot testify for or against his wife when she is virtually a party of the action. And their second proposition was that inasmuch as in this case the Sheriff claimed through the husband, and inasmuch as he had an interest in the event of the action, because if the property, involved in the case, was adjudicated to be his simply, it went to the payment of his debts. Upon that species of argument they held that he was virtually a party to the action. You see the case is very important in many aspects. The point to which I adduce it now is this, that Judge Wright concedes in his argument, assumes it as a postulate in his argument, as a first principle, whence to be argued, not a point of contention to be argued about; he assumed that when the statute removed the disability of a party to the action that then every other disability fell with it. I mean the disability involved in this case. The rule at common law did not prohibit husband and wife from testifying in a civil action, unless one or the other, or both, were parties, or directly interested in the subject of the action. The common law did not, I repeat, prohibit the husband or wife from testifying in a civil action unless one or

the other, or both, were parties directly interested in the subject of the action. There the husband was not a party. The wife propounded herself as a witness. Nor had he such a right as would have disqualified the wife, by strict common law rules, from testifying. The action was in no proper sense against him. He made no claim to the property, and the Court held the wife a competent witness in her own behalf.

Now, thus I say, that in this action the plaintiff at common law would have been a competent witness, save for the fact that he is a party to the action; and that that disability having been removed, he is therefore validated by operation of old common law principles, as a witness, and made to testify here. So then, as well upon principle as upon authority, as well by precedent as by reasoning, we arrive at the settled conclusion that by virtue of the Act of 1857, as amended by subsequent statute, that this plaintiff as a plaintiff, because a plaintiff, consequent upon his relation of plaintiff to the action, was a competent witness in his own behalf. Then the question arises whether the Act of 1867 disfranchises, disables him to be a witness in the cause, makes him, as is contended by the other side, an incompetent witness the case.

#### MODERN LEGISLATION ON THE QUESTION.

Now, in view of the uniform traditional current of legislation and decision in England and in this State, as I have adduced them to your Honor, in view, I say, of this uniform and unbroken series of acts of legislation, all tending in one direction, without ebb or returning tide, in the direction of enlarging the sphere of competency, and removing all the obstacles to the admissibility of a witness—I say, in view of this series of legislation and adjudication, we are confronted at the threshold with an *a priori* argument relative to the Act of 1867, that it wrought no such change as contended for in the Act of 1857. It is not to be presumed, in the absence of express language to the contrary, that without adequate cause the Legislature would renounce its old principle, recede from its deliberately adopted pathway, and relapse into the obsolete, abandoned maxims of the common law. I say this is a valid, cogent and palpable argument—an argument irresistible before your Honor, unless it be met and overthrown by the language of the statute. Well, Sir, so far from being repelled and overthrown by the language of the statute, we find the title and text of the act conclusively establish and decisively clinch and determine the law as we maintain it, namely, show to a demonstration, beyond cavil, beyond question, that the Act of 1867 does not conflict with the Act of 1857—does not affect or impair its efficacy. Why, what is the title of the act:—"An act to enable husband and wife," not a restrictive, but an enlarging act; not a disabling, but an enabling statute. Hence, plainly, it was not within the intent of the Legislature, they did not design the effect by this act to disfranchise and to disqualify any man competent to be a witness; but they meant to create a new competency, and to bring upon the stage a class of witnesses, theretofore not qualified to speak. And, if your Honor please, let us look now to the very language of the act, to see whether or no it disqualifies and inca-

pacitates Mr. Tilton as a witness. The learned counsel on the other side relied with confident presumption (I will not say with presumptuous confidence) upon the phraseology of this act as disqualifying the plaintiff here from being a witness. If your Honor will do me the kindness to follow the terms of the statute, I apprehend there can be no question about it :

"In any trial or inquiry in any suit, action, or proceedings in any court, or before any person having by law competent authority, in any trial or inquiry, in any suit, trial, or proceeding, in any court, or before any person having by law the consent of parties or authority to examine witnesses or bear evidence of husband or wife, of any party thereto, or of any person in whose behalf such suit, action, or proceeding is brought, prosecuted, or opposed or defended, shall, except as hereinafter stated, be competent and compellable to give evidence, the same as any other witness on behalf of any party to such suit, action, or proceeding."

Now, what is the case provided by the enacting part of the statute? The case provided there is where a witness, husband or wife, as the case may be, is propounded to testify for or against husband or wife, *a party to the action*. These are the very words of the statute. Where the husband or wife, as a witness, is propounded against husband or wife, "party to the action." There is no escape. That is plain, intelligible, and not to be contradicted. Now, then, what is the exception? May it please your Honor, the office of an exception is to take something from the enacting clause of the statute—to abstract or deduct a particular thing which otherwise would have fallen under the class or category provided for by the enacting part of the statute.

Hence an exception necessarily covers the same thing that the principal provision does. Now, let us read the exception in that light:

"Nothing herein contained shall render any husband or wife competent to give evidence for or against the other, in any action of criminal conversation or adultery."

That is to say, husband or wife shall not be competent or compellable to give evidence against husband or wife *in a case where he or she is a party to the action*. There is no resisting that. First, it contemplates a case where the husband or wife, witness, is adduced to testify for or against husband or wife, and secondly and further, where he is so adduced to testify, not against a wife having a sentimental interest in the action, but against a wife or a husband, *party to the action*. That is the reading of the statute. Hence your Honor will perceive, in view of the uniform policy in this State, in view of the very title of the act, blazoned upon its threshold, so to speak, in view of the literal and the large phraseology and effect of the Act, in view of all this you perceive, that this Act of 1867 does not touch the Act of 1857. They move, so to speak, in different orbits, with no point of contact between them, in lines parallel that run on to infinity without intersection. They cover different subject matters; they contemplate different ends. The act of 1857 contemplated the witness in his absolute individuality, namely, as a party to the action, and provides that he might testify for himself. The act of 1867 contemplates the witness in his marital relation, in the relation of husband or wife, and pro-

vides when he may and when he may not testify for or against the other, husband or wife, as the case may be. So that the two acts, I repeat, are not in conflict or in contact either. On the contrary, the one is a supplement to the other. The first provides only when a husband might testify or a wife might testify by reason of being a party to the action. The other removes the bar which is interposed between husband and wife testifying for or against each other when they are parties to the action.

MRS. TILTON'S ATTITUDE TOWARD THE ACTION.

But it may be said on the other side, and in fact it was intimated—indeed we have a premonition of it from the declarations of my learned friend—it may be argued that virtually Mrs. Tilton is a party to this action; at any rate, that she has such an interest in the action as makes her, if not a titular, at least a virtual party to the action. Now, Sir, "interest," as applied to the qualification or disqualification of a witness, is a term well known to the law. Formerly, as has been already developed in the discussion, interest disqualified a witness. Well, what interest? Why, no other interest but a pecuniary interest. A pecuniary interest of six cents was sufficient to make a witness incompetent, but no other interest; and it is another illustration of the absurdity and barbarous jargon of the old common law, that, whereas an interest in the event of an action of six cents, made the most reputable man in the community an incompetent witness, yet no other interest, no matter what it might be, disqualified or affected him. Hence it was that while a person having this interest of six cents in the event of the cause was incompetent, yet a father might testify against a son, a brother against a sister, a daughter against her mother—might so testify, not only in a cause involving money, but testify in a cause involving liberty, reputation, aye, life itself. Hence I say that the word "interest" in the clause means a financial interest. Now, Sir, what financial interest, what pecuniary interest, what material interest has Mrs. Tilton in this action? I repeat, she has a prodigious interest; she has an interest of character; she has the same interest, however, that the children have, that the friends have, the same in kind, though not in degree. It is an interest of feeling; it is an interest of repute, but it is not the interest which the common law recognized as necessary and as efficacious, to constitute one a party in interest, a party to the cause, and so incompetent as a witness. Hence, in 46 Barbour, you will find the very point assumed in argument. It is the case of *Carpenter vs. White*, page 291; an action of criminal conversation, and the husband had the audacious impudence (my friends would say on the other side) to offer his wife as a witness to prove the fact of adultery. And by what argument did he undertake to prove that she was a competent witness? His first and major premise was that all persons who were parties to the case were by virtue of the Act of 1857 made competent witnesses. Now, this wife of this man is virtually (if not virtuously) a party to the case, is a person in interest, and therefore she is a competent witness. But the Court at General Term indignantly scouted it, and said that a wife, in an action of criminal



conversation, has no interest in the cause—is not a party in interest—is not a party directly or obliquely to the action—but on the contrary that it is brought solely and exclusively for the benefit of the husband. Hence, if your Honor please, inasmuch then as the Act of 1867 excludes a husband and wife in an action of criminal conversation, from testifying for or against a party to the action; and inasmuch as Mr. Tilton here does not offer himself to testify against his wife, a party to the action, he is not within the terms or the spirit or contemplation of this statute. Mrs. Tilton is within the very terms of the act. Why? Because her situation answers to all the conditions which the statute prescribes as a ground of disqualification and incompetency. This is an action of criminal conversation. She is the wife of the plaintiff, and if she were to offer herself as a witness, or to be offered as a witness, then she would be testifying in an action of criminal conversation for or against her husband, party to the action. And that is what the law meant; and why it intended to exclude her is obvious enough. My learned friend could not with his ingenuity have failed to stumble upon the reason. A husband cannot bring an action for criminal conversation and then produce his wife as a witness in his own behalf, because there might be a corrupt conspiracy between them. That was the ground for it, and an all-sufficient ground. Then, Sir, having, I think, deferentially, submissively, may I say, demonstrated, that by the Act of 1867, this plaintiff in this cause is a competent witness in his own behalf, and having demonstrated that by the text of the statute—the letter of the statute—he is not specially disqualified, I come to consider, and we are now in the condition to consider, the citation of the authority to the contrary. It is the case of *Dann vs. Kingman*. Now, if your Honor please, I am not here to impugn the doctrine of *stare decisis*; on the contrary, if I know myself, I have an almost superstitious veneration for precedent. Nevertheless I have been taught by my reading that the authority may be taken away. Mr. Ram, in his exquisite treatise on "Legal Judgment," page 67, holds this language:

"A precedent possesses the binding force mentioned, either if in the mind of the Court it is wholly unimpeachable on the ground of want of principle, or otherwise; or, if impeachable, the objection to which it is so exposed, is not, in the consideration of the Court sufficient to exclude its title to be authority."

In a subsequent chapter, he enumerates the conditions and circumstances that discredit and debilitate and destroy a precedent as a binding authority. He says:

"One decision may not be a binding authority, if the principle or reason on which it is grounded, or some other cause, makes it defective. In an after case the soundness of the earlier decision may be inquired into, and if on examination it is in the mind of the Court thought to be unfit to stand, that decision it is allowed to reject as a binding authority. A decision may be so disregarded if it is contrary to reason and common experience and its effect would be to make confusion in property, or if it 'outrages all reason and sense;' or if, it being a case which turned on the construction of the terms of a particular instrument, 'the Court ought there to have come to a contrary conclusion,' 'the Court there had not adopted the true construction, nor that which was warranted by the ordinary rules of criticism or language,' or if the judg-

ment was 'founded on a mistake of the law;' or if it does not appear that, in the case decided, the attention of the Court had been directed to a strong authority upon the point."

Now, Sir, in view of this canon of construction ascertaining or determining the effect of a precedent as a binding authority let us consider this case of *Dann vs. Kingman*.

The attention of counsel was here called to the fact that it was four o'clock, and the Court adjourned to 11 o'clock Friday.

## FIFTEENTH DAY'S PROCEEDINGS.

### THE QUESTION OF MR. TILTON'S RIGHT TO TESTIFY.

GEN. PRYOR CONCLUDES HIS ARGUMENT—MR. BEACH DRAWS A PICTURE OF MR. TILTON'S ALLEGED WRONGS—THE DEBATE CONCLUDED BY MR. EVARTS—THE DECISION TO BE RENDERED ON MONDAY.

The eloquent appeals made on Friday by the legal champions of Mr. Beecher and Mr. Tilton, regarding the competency of the latter as a witness, were preludes prophetic of the flights of oratory that are to be witnessed toward the closing of the trial, when all the evidence has been heard. In that respect the day was one of the most notable ones on the calendar of scandal events. The verdict of the least intelligent part of the audience was that the proceedings were dull and uninteresting, and during the reading of the dry and technical points of law, and the arguments of the lawyers thereon, many heads in the gallery nodded with drowsiness, and the rustle of newspapers frequently arose above the speaker's voice. To the many lawyers present, however, the arguments were of the highest interest. Gen. Pryor resumed his argument, continuing until noon, quoting and explaining rapidly and with accuracy his authorities. His manner was more quiet than on Thursday, and he was evidently more at ease. He closed rather abruptly, having only referred during his entire address to the legal points of the case.

Mr. Beach, who unexpectedly arose and begged to touch upon some points not referred to by his associate, viewed the case from a social point of view, and drew such a picture of Mr. Beecher's alleged crime that the audience were fairly overcome. Mr. Beach had not concluded at 1 o'clock, and the court therefore adjourned for an hour.

Mr. Beach resumed his speech, and did not fail to take advantage of the door left open by Mr. Evarts in departing from the legal aspect of the case to speak of the asserted baseness of Mr. Tilton in

wishing to testify against his wife. His retort was very earnest—almost passionate. Mr. Beecher sat immovable, and his face neither changed in color nor expression, while he looked fixedly at the chandelier below the center of the ceiling, and listened to the stinging words of the plaintiff's counsel.

Mr. Beach sat down, tired by his effort, and before he was fairly seated Mr. Evarts was on his feet. He did not think Mr. Beach's words called for, and he accused him of introducing at this time in the trial a speech which should have been delivered at the close, adding that the only excuse that the plaintiff's counsel could have was that the evidence at a later stage would not justify such words. Mr. Evarts did not again refer to this subject. Later on he challenged his adversaries to show any law making a husband and wife competent witnesses against each other. Mr. Beach immediately met the challenge, and a short passage at arms followed, Mr. Beach referring the Court to the case of Southwick against Southwick as answer. Mr. Evarts did not think that his argument had been answered, and continued. It was 10 minutes before 4 o'clock when he finished, and Mr. Beach then arose. Glancing at the clock he said that it had been his intention to reply to some of the opposing counsel's arguments, but, it being late, he would refrain and submit the case as it stood.

Judge Neilson said the argument had been of great interest to him, and he would give it all possible consideration. He would not write an opinion, as that would savor of pedantry; but he would give his conclusions on Monday morning.

Audiences every day crowd the court-room and listen to the eloquent appeals of the counsel for their respective clients, the learned arguments and clever repartee, but they have no idea of the great amount of labor and research that is performed by the younger and less prominent lawyers. One phase of that work is displayed by the struggle just concluded regarding Mr. Tilton's competency as a witness. Before the trial began counsel for the plaintiff did not anticipate much trouble in placing their client on the witness stand. But one day Mr. Pearsall discovered points in the Reports of the case of Dann against Kingdom, which might be damaging to the theory of the plaintiff's admissibility. This opened the eyes of his associates, and they instructed Mr. Pearsall to investigate the case further, and continued research brought to light the case of Petry against Howe, before the same judge, in which the former decision was reversed and the

husband was allowed to testify. The result was as was expected. Mr. Evarts cited the case of Dann against Kingdom, and Mr. Pryor answered by quoting the case of Petry against Howe.

On the side of Mr. Beecher, Mr. Abbott, the author of "Abbott's Digest," has been an active though quiet worker; and while his colleagues have been placed prominently before the public and have been admired and applauded, he has been doing not less effective work in furnishing them with authorities for their arguments and statements.

## THE PROCEEDINGS—VERBATIM.

### THE JUDGE'S REQUEST TO JOURNALISTS.

Judge Neilson—Counsel will remember that yesterday morning on objection being made to matter contained in a pamphlet, I said I would write to the editor. Afterwards, however, finding that it was not published by the editor of the newspaper but by an independent publishing house, I wrote to that house calling their attention to what they might see in this morning's paper by way of criticism, recommending them hereafter to refrain from prefacing each day's proceedings with comments objectionable; also saying I thought it hard that a citizen should not be allowed to attend here as a witness under a subpoena and perform his duty by way of testifying, without having personal flings and descriptions of him given. It is radically wrong, and an abuse. I also stated to the publisher I hoped the pamphlets hereafter would be so unobjectionable that I should have the pleasure of hearing counsel commend them instead of complain of them. The same writer that would give a personal description of the witness yesterday, Mr. Woodruff—a personal description offensive to him, doubtless, and to his family—might hereafter describe other witnesses as if they were angelic, and the contrast so sharp would operate improperly; and it is improper, utterly. I do not purpose, however, hereafter to, on my own motion, call attention to this subject. I have said to the press all I can say. I am compelled now to speak of it because my attention has been called to it by some of the newspapers who appeal to me and say I ought to suppress this, and by numerous letters received from very respectable gentlemen calling my attention to it; but I shall not on my own part voluntarily recur to the subject, but in this way commend it to the attention of those who have occasion to speak of the trial in their papers.

### MR. PRYOR'S ARGUMENT RESUMED.

Mr. Pryor—If your Honor please, yesterday, on the adjournment, the immediate topic of discussion was whether the antecedent and independent competency of the plaintiff to be a witness on his own behalf had been impaired or affected—a competency, you will remember, conferred by the Act of 1857—had been impaired or affected by the Act of the 10th of May, 1867, and it was entirely obvious, it had been demonstrated by reference to the title of the Act of 1867, by



reference to its text, by consideration of its pervading and prevailing import—it was demonstratively obvious that there was no clash or collision between the Act of 1857 and the Act of 1867; that, on the contrary, they covered different subject matters, contemplated different ends, and accomplished different and dissimilar results—were, indeed, component parts of an harmonious whole. Now, then, it is a familiar maxim of the law that a former statute is not repealed by a subsequent statute, except the provisions of the two are irreconcilably incompatible, and that if the two may stand together the two shall stand, and full effect and operation be given to each. So, then, it resulted logically and legally that the competency to be a witness in his own behalf, conferred upon this plaintiff by the Act of 1857, was not affected or disparaged by the subsequent Act of 1867. Nevertheless, the research of the learned gentlemen on the other side has discovered and produced a decision—for argument's sake, indeed, in candor I must allow it is not *obiter dictum*, and is an adjudication to the point—their research has produced a case of *Dann vs. Kingdom*, reported in 1 N. Y. Supreme Court Reports, wherein it is held, and as I have admitted, it is adjudicated that the Act of 1867 does disqualify the plaintiff to be a witness in his own behalf.

Judge Neilson—Is that the case in which Judge Smith wrote the opinion?

Mr. Pryor—That is the case, Sir. Now, please your Honor, if that were a decision of any superior tribunal, of your own General Term, much more if it were a decision of the Court of last resort—the Court of Appeals—then no alternative would be left to your Honor but to bow in submissive silence to the adjudication, no matter how repugnant to right and to reason. But this is not the decision of a superior tribunal. It is the decision not of the Court of Appeals or of your own General Term, but is the decision of the General Term of another Court of only co-ordinate jurisdiction, and therefore, albeit *prima facie* entitled to respect and consideration, nevertheless, it is open and accessible to criticism, and if it be plainly repugnant to reason and right, and to common sense, the privilege is conferred upon your Honor to scout and reject it.

#### JUDGE NEILSON INSTRUCTS THE COUNSEL.

Judge Neilson—I will mention to you the rule we adopt in this Court, Mr. Pryor. In respect to the decisions of Courts other than the Court of Appeals in this State, we accept them, and as far as we think they are sound and just, adopt and follow them; and in like degree, though perhaps in a less degree, we accept the decisions of other States, also of the Courts in England, holding to ourselves the right to consider—the right and duty to consider the weight of the opinion as resting upon reason and upon authorities cited from other sources, and which may or may not be commended to our judgment in the premises.

#### MR. PRYOR EXPLAINS HIS POSITION.

Mr. Pryor—I supposed, if your Honor please, as you have stated, that the criterion of authenticity and authority attaching to the decision of another Court, was its conformity to reason, and I was proceeding to exhibit conclusively, I deferentially submit, and with all respect to the learned Court by whom the

decision was promulgated, that this decision is absolutely repugnant to reason, and has no shadow of foundation in the basis upon which it purports to be established. My learned friend, using the license legitimately belonging to counsel, imagined that this case had been argued by the profession with research and vigilance; but the report exhibits nothing of the kind, and the opinion of the Judge himself, as you will observe, is embodied in this brief, curt paragraph:

“The plaintiff was not a competent witness to prove such marriage. The Act of 1867, to enable husband and wife to be witnesses for and against each other (Laws 1867, Chap. 887), expressly excepts the cases where the question of adultery of the husband or wife is in controversy, except to prove a former marriage, in case of bigamy, and the fact of marriage in actions of divorce.”

Thus you perceive that the learned Judge arrives at the conclusion by no process of reason, nor is he sustained in the conclusion by any citation of authority, but he merely reaches it *per saltum*, and announces it oracularly as an *ipse dixit*. And what is that *ipse dixit*? Why, that the Act of 1867 prohibits a wife in an action involving a question of adultery from being a witness. Now, Sir, the Act of 1867 accomplishes no such thing. The decision therefore is founded upon a plain, palpable misreading and misconstruction of the very Act upon which it purports to be founded. Bear in mind, now, the words of the Judge, that this second section of the Act of 1867 forbids a party in an action involving a question of adultery from being a witness, that is to say, from being a witness absolutely and unqualifiedly. He announced the proposition in general terms without restriction or modification; whereas, what are the terms of the Act itself?

“Nothing herein contained shall render any husband or wife competent or compellable to give evidence *for or against the other*.”

Not competent or compellable merely to give evidence, but competent and compellable to give evidence *for or against the other*

“in any criminal action or proceeding (except to prove the fact of marriage, except in case of bigamy) or in any action or proceeding instituted in consequence of adultery, or in any action or proceeding for divorce on account of adultery (except to prove the fact of marriage) or in any action or proceeding for or on account of criminal conversation.”

Now, Sir, the sentence is long and involved, and likely upon a cursory perusal, inasmuch as the qualifying clause is found in the second line of the sentence, before the learned Judge arrived at the concluding line he had dropped from his mind and his memory those qualifying words, namely, “for or against the other.” So he announced that this Act, in peremptory and absolute terms excluded husband or wife from being a witness in an action of criminal conversation; whereas, the Act only excludes husband or wife from being a witness in an action of criminal conversation *for or against the other*.

#### TILTON NOT A WITNESS AGAINST HIS WIFE.

Now, Sir, this witness is not proffered here, this witness does not offer to take the stand and testify in this case, in legal sense for or against the wife. He presents himself to testify against the wife's alleged seducer. He proposes, under the solemnity of an oath, to swear to the adultery of Henry Ward Beecher.

It is not for or against the wife, in a legal sense, that he proposes to testify, and therefore his qualification or competency to be a witness is not affected or disparaged by this exception in the Act of 1867. Wherefore, then, this decision of the learned Justice, inasmuch as—and I beg your Honor to bear in mind—inasmuch as the learned Court put their decision exclusively upon the terms of this Act, inasmuch as they do not pretend or contend that, independently of this Act, he would not be a competent witness, but on the contrary, by implication assume in the argument that but for this Act, by the principles of the common law, and in conformity to the Act of 1857, he would be a competent witness; and repose their decision exclusively and alone upon the terms of this Act; and, that foundation sinking beneath them, vanishes out of sight and consideration their decision. But, Sir, I say that is the solitary decision in the books in support of the position of my learned adversary. Indeed, it is the solitary decision in the books expounding the particular meaning and effect of the Act of 1867, with the exception of a Special Term decision, to which my learned associate will call your Honor's attention—a Special Term decision of the Superior Court reported in 7 Robinson. Now, Sir, although that be the only decision in construction of the Act of 1867, it is not the only case that has occurred under the operation of the Act of 1867. In 49 Barbour you will find, at page 106, the case of Bunnell *vs.* Greathead, which was an action, like this, of criminal conversation, in which the plaintiff propounded himself as a witness, and was accepted as a witness, and was admitted as a witness, and testified as a witness, and he alone testified to the fact of the wife's adultery. Now, Sir, learned counsel appeared there on both sides—an able Court, the General Term of this Department, over which presided Mr. Justice Gilbert; and these able members of the bar and members of the bench, then having this Act of 1867 concretely applied to that case, brought to their attention, it never occurred to them that the Act of 1867 affected the competency of the plaintiff in an action of criminal conversation; but on the contrary, by concession, they admitted without question or cavil, that he was a competent witness, and so competent a witness, that he got a verdict of \$10,000 damages, whereupon the cause was appealed to the General Term, and the defendant, of course, exerted himself, and the counsel—enterprising and ingenious counsel, Judge Nelson among them, Homer A. Nelson—exerted themselves with a view to annul and reverse that judgment and that verdict, and they tortured ingenuity and research to find some ground upon which to batter down that judgment; yet it never occurred to them to urge the objection that the plaintiff, under the Act of 1867, was not a competent witness. The judgment was reversed, but upon another ground, namely, that the husband had connived at the wife's adultery—reversed upon that ground, with no suggestion, with no intimation that he was not absolutely a qualified and competent witness, not only to testify, if your Honor please, in popular parlance, in his own behalf, but to testify to the wife's adultery, and so against her.

Again, may it please your Honor, by reference to Vol. 4 New-York Supreme Court Reports, page 85, you will observe the

case of Petrie *vs.* Howe, decided in 1874—whereas Dann *vs.* Kingdom was decided the year before—which case of Petrie *vs.* Howe was also an action of criminal intercourse, a very peculiar case in many respects, but decisive in the particular now under consideration. There the husband was permitted to testify, and was permitted to testify without question of his competency as a witness, permitted to testify to the result of obtaining a verdict. From the judgment entered upon that verdict an appeal was taken to the General Term, and the case was elaborately argued, we may suppose, by the bar, certainly elaborately considered by the Court, and there was no objection taken either by counsel or by the General Term of the Court that the plaintiff had been improperly admitted as a witness. There was no hint or suggestion that by virtue of the Act of 1867 he ceased to be a competent witness. On the contrary, the judgment was attacked for errors—errors in the admission of evidence—other evidence. But there was no hint or suggestion, I repeat, either by the counsel for the appellant or by the Court, that the witness was not an entirely competent witness. On the contrary, by implication, by omitting such an exception, they, in effect, admitted that he was competent.

A JUDGE'S WISE SECOND THOUGHT.

And observe, may it please your Honor, the opinion at the General Term was written by Judge E. Darwin Smith, the very Judge who pronounced the decision in Dann *vs.* Kingdom. Hence, what is the inference? That his own sober second thought, with a more deliberate consideration, had conducted him to the conclusion that his decision in Dann *v.* Kingdom was erroneous and could not stand. Be it how it may that he arrived at the conclusion, clearly it is that in this case of Petrie *v.* Howe, he silently, without objection, conceded the competency of the witness. Now, Sir, this then is the only decision in our path; a decision not of any superior tribunal; a decision perfunctory and ill-considered, and unsustained by any principle or authority, a decision which is manifestly repugnant to the very statute upon which it purports to be founded; and the question is, will your Honor be guided by that decision? You, Sir, are placed in this dilemma. Here is a peremptory, positive enactment of the sovereign people of the State of New-York declaring that no witness shall be excluded because he is a party. On the other hand, here is a decision characterized and discredited by the circumstances which I have recited, saying that he shall not be admitted. Which will you obey? I have no hesitation in conjecturing that your Honor will obey the imperative and plain mandate of the law, because this opinion, this decision, is too frail a yoke to subjugate your Honor's independent intelligence.

ANOTHER OBJECTION ANSWERED.

The learned gentleman urged another and an independent reason why the plaintiff is not a competent witness in this action in his own behalf, that reason being based upon this proposition of law which he promulgated, namely, that in a collateral proceeding, that is to say, in an action between third parties, neither husband nor wife can give testimony tending to criminate the other. Your Honor observes the terms of the proposition. Now, the first reply to that is this: that though the proposition



be sound and valid, it does not go to the question here under debate. The question here under debate is whether this witness is a competent witness, whether he may be sworn as a witness; whereas, this proposition, if true, does not touch the question of his competency, but goes only to intercept the delivery of particular testimony—namely, testimony tending to incriminate the wife—so that upon the strength of that very proposition, if it be true, he is a competent witness, must be sworn, and is entitled to testify generally in the cause; but if the proposition be true, when he comes to deliver testimony incriminating the wife, then the gentlemen on the other side may interpose and arrest the evidence. But, if your Honor please, the proposition is not a valid, sound, true proposition of law. It is not law; it is not the law of England; pre-eminently and emphatically it is not the law of New-York, that in a collateral proceeding, that is, an action between third parties, husband and wife may not give testimony tending to incriminate one another. The earliest indication of that rule of law was thrown out in *Rex vs. Cliviger*; indeed, not only thrown out, but, I concede, adjudicated in that case, a case which my learned adversary either has not discovered to have been overruled, or else in the abandon of discussion, he forgot to call your Honor's attention to the cases which have rejected and overruled it; for, soon afterward, in the case of *Rex vs. Bathwick*, reported in the 2d of *Barnwall & Adolphus*; and then again in the case of *Rex vs. All Saints*, reported in 6th *Maule and Selwyn*, that very Court which originally promulgated this rule, retired from this position, renounced the principle, recalled the rule and effectually overruled it; and in those two cases the husband or the wife was admitted to testify in one case, although the testimony went directly to convict the husband of perjury, and in the other case went directly to convict him both of perjury and of bigamy. Now, thus the case was overruled there. But meanwhile the erroneous decision had got some headway, and your Honor knows with what fecundity erroneous decisions propagate themselves; so eventually that rule of law got incorporated in some books of no authority, and was adopted by some of the courts in this country inasmuch that although the rule has been renounced in England and the principle repudiated, yet I frankly admit that in some of the reports of this country it is still an actual living principle. But not in New-York; it never has been the law in this State, and it is not, therefore, law to-day. Nor has it been recognized as a canon in the law of evidence by any authentic and authoritative text writer. What says *Greenleaf*, Vol. I. of his treatise on evidence, Sec. 342?

"But they, the husband and wife, are not admissible as witnesses against each other where either is directly interested in the event of the proceedings, whether civil or criminal."—(Speaking of the common law:) "Yet in collateral proceedings not immediately affecting their mutual interest, their evidence is receivable, notwithstanding it may tend to criminate or may contradict the other, or may subject the other to a legal demand."

"Notwithstanding it may tend to criminate," *Greenleaf* announces that to be the rule of law. And so, Mr. Phillips, in his book—which I without invidious comparison may say stands at the head of the works upon the subject of evidence—announces the rule thus:

"Although the husband and wife are not allowed to be witnesses against each other where either is directly and immediately interested in the event of a proceeding, whether civil or criminal, yet in collateral proceedings not immediately affecting their mutual relations, their evidence is receivable, notwithstanding that the evidence of the one tends to contradict the other, or may subject the other to a legal demand or even to a criminal charge."

And in the latest work upon the same subject, I allude to Mr. Roscoe's book upon criminal evidence, at page 123 he dogmatically announces the law thus (adverting to the rule laid down in *Rex vs. Cliviger*, which I have already animadverted upon)—adverting to that rule, and then announcing the true rule, where husband and wife are excluded from testifying the one against the other at common law. May it please your Honor, he says:

"But the rule only extends to cases where the husband or wife are actually on their trial, that they may give evidence tending to criminate the one or the other, except where the person against whom the evidence points is actually on his trial. It was once thought otherwise, but the mistake (clearly a mistake) seems to have arisen from not having drawn the distinction clear enough between competency and privilege."

And so, in a recent case in this State, reported in *Abbott's Practice Reports*, New Series, Vol. V., at page 55, the title of the case, *The Royal Insurance Company vs. Noble*, Mr. Justice Barrett propounds the principle in these words:

"The evidence of husband and wife is undoubtedly receivable in a collateral proceeding for the purpose of proving any fact material to the issue, and that although the fact so testified to by the one may tend to criminate or contradict the other."

That, Sir, is the language of the law of the State of New York.

#### THE LAW IN RHODE ISLAND.

In Rhode Island, the rule as contended for by the learned gentleman on the other side, had been carried perhaps to as far an extent as in any other State. It was one of the States whose jurisprudence had been invaded and vitiated by the original error propounded in *Rex vs. Cliviger*, but in a recent case (*The State vs. Briggs*, IX. R. I., 361) the Court of Appeals of that State had the authority and the correctness of the old rule, the rule contended for by the gentleman on the other side, brought directly under criticism and review. The case is stated by *Durfee, J.*:

"The defendant was convicted in the Court of Common Pleas on an indictment for procuring an abortion on one Mary Jane Fisher. The case comes up on a bill of exceptions for alleged erroneous rulings of the Court below. The first two exceptions are based on the following grounds, to wit: That the said Mary Jane Fisher was, at the time of the alleged offense, a single woman, having never been married; that she afterwards intermarried with one Edwin A. Hacket; that said Hacket was the person by whom she was got with the child for whose miscarriage she was operated on; that said Hacket employed the defendant to perform the operation, and came to him with the said Mary Jane for the purpose of having it performed; that, on the trial of the defendant in the Court below, the said Hacket and his wife were called as witnesses for the government, and admitted to testify against the objection of the defendant, the objection being that the testimony of each of them would tend to criminate the other of an indictable offense, that is to say, here of the offense of fornication" (in Rhode Island fornication is a penal offense) "and him of participation in the offense for which the defendant was indicted."

That is, being an accomplice in the abortion. Now, Sir, the Court, in pronouncing judgment, held the decision of the rule in the Court below to be correct in admitting the evidence, and say, reviewing the cases:

"Some of these cases recognize the distinction suggested in the cases of *Rex vs. All Saints*, and *Rex vs. Bathwick*, between testimony which is directly criminative and that which is criminative only when connected with other testimony, husband and wife being deemed competent witnesses to give testimony, in collateral cases, is of the former description. But upon principle we find no satisfactory ground for the distinction. The supposed disqualification of husband and wife to give, in collateral cases, testimony directly criminative of each other, is said to rest on the policy of avoiding dissensions between husband and wife; and, if so, the disqualification ought to be complete, for such dissensions, differing only in degrees of virulence, would be likely to result from testimony which tends to criminate, as well as from that which is directly criminative. There are logically only two alternatives, either to exclude the testimony entirely, or to admit it to any extent in collateral proceedings, provided that no use can afterward accrue therefrom in any direct proceeding."

They then say the true rule and the sounder rule, the logical rule and the philosophical rule, is to admit the testimony of the wife, and the decision below was ratified. Finally, by way of authority on this subject, I will cite to your Honor the opinion of one who was indeed an oracle of the law, I mean the late Judge Cowen, who in a note appended to page 69, volume 1, of "Phillips Upon Evidence," note 40, uses this language:

"Indeed, it would seem to be now the settled doctrine, both on authority and principle, that husband and wife may be received to contradict or criminate each other in a collateral matter, *i. e.*, in all cases except where one is called to contradict or criminate the other as a party to some cause."

Now, Sir, thus stands the law, upon the best authorities; upon the weight of the preponderating decisions in England and by the uniform decisions in New-York, namely, that in a collateral proceeding—that is to say, in an action between third parties—husband or wife is competent and compellable; certainly competent (there was a question whether compellable) to testify, although that testimony tended directly to criminate the other, husband or wife, as the case might be. But, if your Honor please, though the proposition of law be sound, though the rule be valid as laid down by the learned gentleman, it does not touch this case. What are the terms of the rule? We are considering it now upon the hypothesis that it is sound law that neither husband nor wife, in a collateral proceeding, shall give testimony tending to what?—criminate the other; that is to say, tending to accuse or convict the other of a criminal charge. It was never heard, it was never hinted, that husband or wife was incompetent, in a collateral proceeding, to give evidence which tended merely to the disparagement or to the infamy of the other.

#### AN EXAMPLE FROM NEW-JERSEY PRACTICE.

Instead of wasting your time and wearing out your patience with copious citations of authorities which I have at hand, I have selected one authority from the State (New-Jersey) where the law, as contended for by my learned adversaries, has been carried to as extreme an extent as in any State. I have selected, I say, a case from that State wherein the limitation of the rule,

as I now state it, is propounded by the Court—propounded, too, with avowed reluctance, yet propounded under the constraint of a uniform stress and strain of authority. The Court say in *State vs. Wilson*, 2 Vroom R.:

"But in the case now before this Court the charge of the husband was direct; his testimony was that he came upon his wife *flagrante delicto*.

"As the imputation was direct, the only consideration which remains is, was it a crimination within the meaning of the rule? As the wife had been tried and acquitted, the charge was of an offense for which she could be indicted."

Now, adultery in New-Jersey is an indictable offense. Mark, I read this only as an authority for the limitation upon the rule, as I have stated it. The Court say:

"It was not enough that it attributed moral turpitude; a technical crime, that is, an act in its nature indictable, must be the direct imputation of the evidence. It was admitted that this rule was an imperfect one, that accusations in the form of evidence proceeding from husband and wife, against each other, of acts highly ignominious and disgraceful, though not indictable, would be sure to occasion family dissensions; but the suggestion was rejected, and rule as above stated was adopted on the ground of its eminent practicalness. It was said in the language of the Judge delivering the opinion of the Court, '*what crimes involve moral turpitude we can settle with some degree of accuracy; but what charges, not amounting to crime, involve moral fraud and turpitude is exceedingly difficult of solution.*' The object of the Court was to establish a uniform and practical rule, easy to be understood and applied; and the criterion adopted was that husband and wife were inadmissible for the purpose of directly charging each other with any offense *which in its nature was indictable.*'"

That is the extent of the rule.

"The disqualification does not arise from the hazard which might result to the party accused of becoming subjected to a prosecution by reason of the evidence—that would have been to put to the rule on the ground of interest—but from the fact that it was safe to assume that all offenses which were indictable were of such disgraceful character that if imputed by one married person against the other, ill-will and want of harmony would be the inevitable result. The indictability of the offense merely fixed the grade of crime which might not be charged."

"I think," says the Judge, "the rule thus adopted should not be narrowed. My inclination would be to extend it, if that could be legally effected, so as to prevent husband and wife from charging each other with any act which is essentially infamous in general estimation; but the authorities do not warrant such an amplification, and we must administer the law as it is handed down to us."

Thus, this Judge, eager himself under any circumstances to prevent husband and wife even in a collateral proceeding from testifying one against the other, impatient as he is of the limitation, yet frankly admits the restriction and says, although it may collide with his own ideas of propriety and of policy, that he has no alternative under the stress of traditional authority but to obey the limitation—which limitation is of the rule propounded by the gentleman on the other side. Admitting it, for argument's sake, to be sound, still in a collateral proceeding—that is, in an action between third parties—husband or wife can testify against each other, when their evidence does not tend to accuse or convict them of a criminal offense, an offense indictable in its nature.

#### FINAL CONCLUSIONS.

Now, Sir, suppose the plaintiff here is admitted to the witness



box, and gives evidence tending to convict, or actually convicting, the wife of adultery. Does that convict her; does that tend to convict her; does that accuse her of crime? No, Sir; not in New-York. By the Levitical law, as your Honor is aware, both husband and wife were denounced to death for the act of adultery, which law, though severe, must be commended for its impartiality, in view of the tendency of disposition in modern civilization, which is rather to applaud the man for his exploits of gallantry, and to heap the load of ignominy upon the wretched and unhappy woman. So, in 1650, when the principles of Puritanism—principles borrowed from the Mosaic dispensation—were predominant in the Government of Great Britain, those bigoted fanatics passed a law denouncing death against adultery. But, upon the return of reason and the Stuarts, that law was repealed; and it never was the law in New-York, it never was a portion of the common law of England, that adultery was a crime. Open licentiousness is a crime, and indictable at common law, but adultery never was a crime at common law. The common law left adultery to the cognizance solely of the ecclesiastical courts, who chastised it *pro salute animæ*, as they expressed it. Adultery never was a crime by the law of New-York; is not a crime to-day with us. It is regarded as a private wrong, exposing the *tortfeasor* to an action for civil damages, but it was never considered a penal offense making him obnoxious to a criminal prosecution. Hence, although the rule contended for by the learned gentleman be sound in all its parts, yet it is inapplicable here, because the testimony which the plaintiff may give, and will give, though tending to convict the wife of adultery, does not tend to accuse her of a criminal offense. So that for these reasons, without detaining you with any amplification of the argument, the second ground presented by the learned gentleman wholly fails—fails because, if sound, it does not go to the competency of the witness, but to the admissibility of the testimony he may give—inapplicable, because it does not tend to convict the wife of a criminal offense, and inoperative because, in truth, it is not the law of the State of New-York.

The learned gentleman endeavored to fortify his position against the competency of the plaintiff, by arguments drawn from general considerations of policy. Now, Sir, those topics, if addressed to a legislature meditating the adoption of an act upon the subject, would be relevant and might be persuasive. But your Honor sits there not to make, but to declare the law, and upon an inquiry what the law is, debate as to what the law ought to be is immaterial and irrelevant. So, then, notwithstanding the temptation presented to me by the field of discussion opened by the learned gentleman, I conceive that I have discharged the duty imposed upon me of demonstrating (I say it with becoming humility) that the plaintiff is a competent witness and should be sworn.

#### OTHER VIEWS OF PLAINTIFF'S COUNSEL.

As soon as Gen. Pryor had finished, Mr. Beach, the senior counsel for Mr. Tilton, began an argument in further proof of the competency of his client to testify. His remarks occupied about three hours of the session.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—Will your Honor accept some few additional observations? The discussion of this question, Sir, has been anticipated by us, and the general conduct of the argument has been assigned to my learned colleague, who has just addressed you. The able, logical and exhaustive argument which he has submitted well justifies that selection, and little is left on the field of this discussion for me but to glean something of the fragments of it which have been left comparatively unnoticed. You will not expect me, Sir, nor shall I attempt to review or repeat, to any extent, the considerations which have been already presented, but shall confine myself in a great degree to remark upon those general topics which have been introduced by our learned adversary. Listening, Sir, to his brilliant and impressive exordium I was led to regret that I was not gifted with those qualities which would enable me in some faint and far off degree to emulate his sonorous rhetoric. I am not, and I shall not attempt it. But I am consoled somewhat by the reflection that this is an argument upon a question of law, addressed to a court of law; that I speak to a mind learned and experienced, and not likely to be moved from its self-possession by the declamation of counsel. That declamation, Sir, would, to my mind, have been far more impressive had it been uttered in the cause of one who had not forgotten the precepts taught by his professional representative; on behalf of one who has invaded the sanctity and privacy of domestic life, and who, as the evidence now stands, has seduced that wife from her allegiance and himself introduced her before his packed Committee to review the secrets of domestic intercourse—introduced, Sir, upon that occasion to vilify and abuse the husband who now seeks the occasion to vindicate himself from the aspersions; to tell to your Honor and to the community the true story of the sad, lamentable difference which has broken up a happy and honored home, scattered its inmates upon the cold charities of the world.

#### THE DEFENSE'S PROPOSITION UNJUST.

I do not accept, Sir, the issue tendered by my learned friend. Reduced to its simple proposition, in practical application to this case, the proposition of the counsel is that Henry Ward Beecher is a witness in this action, and Theodore Tilton is not. Whatever Henry Ward Beecher upon that stand may choose to say, however he may stigmatize Theodore Tilton, if perchance he should swear that from the lips of Theodore Tilton forgiveness has been liberally tendered—nay, if he should swear that he has paid Theodore Tilton for the wrong and received a discharge for his outrage upon his rights, the justice and impartiality of the law still excludes Theodore Tilton from answering the imputations. It presents, Sir, just that conclusion, and if your Honor yields to the proposition, it effects just that practical result,

that Henry Ward Beecher is free and at liberty to testify to whatever his conscience will permit—the accused seducer may attempt as a witness to free himself from the accusation, and the wronged and outraged husband must sit with lips sealed by the law, and can offer to this Court and jury no testimony in support of his action. Before your Honor shall reach a conclusion of that character, so unjust in all its theory and mischievous in all its consequences, you must be driven to it by clear and satisfactory authority. It is contrary to our notions of justice. It seems to be contrary to the theory of our laws of evidence, and works a practical wrong which would outrage the common sense of the community.

GRAVITY OF THE QUESTION.

Now, Sir, I admit this is a grave issue, important not only as affecting this principle established by the wisdom and the experience of the past, but grave and important in its relations to those other subjects of domestic concern and public policy submitted to your Honor. I agree, Sir, that the law cherishes with tenderness the family and the home, and well it is, Sir, that it is so; for I too agree with my learned friend that upon them rests the true foundation of every well regulated society and Government. It is there that those lessons of purity and wisdom are taught, forming the mind for the discharge of those exalted duties which belong to every member of society, and from them must come the agents who are to carry onward and upward the great mystery of man's creation. I agree that no society or Government can stand—virtuously stand—except upon the maintenance of the sanctity and the virtue of the domestic circle. So I agree too, Sir, that there is much of beauty and sacredness in the idea of unity attached to the marriage relation. That idea of the confluence of two souls mingling all their affections and sympathies and interests in one, and hand in hand meeting the contingencies and adversities of life with mutual encouragement and love, is well calculated to excite the beautiful imagery of my learned adversary. It appeals, Sir, directly and feelingly to my own sympathies, but are we to forget that in what is called the progress of civilization that that idea has been mangled and torn asunder? Are we to be blind to the legislation of the present? Are we to ignore the fact that all these ideas have been, exploded and destroyed by what I deem the vandalism of modern legislation? In 1848 that unity was effectually impaired under its notions and by the common law the wife could not sue the husband. She had no status in the Courts except in the wide discretion and the exalted equity of a Court of Chancery. Yet she may now bring her action. By the common law the wife could hold no separate personal property except by ante-nuptial settlement or by the decree of a Court of Equity, and yet now she may go out into the world and barter and trade and tussle with the energies of commercial and business life. Once her true sphere was in the domestic circle and around the hearthstone, cultivating those tender sentiments and qualities which were at once her grace and glory, but to-day by the voice and power of legislation she is ushered into the busy scenes of life and becomes an active and independent actor in all struggles. The counsel says this idea of unity, this consecration of the domes-

tic circle cannot be torn by the rude hand of the law. Sir, it has been mangled and torn. That identity of interest, that union of soul has been separated not only by the voice of legal theory but by the practical application of it to the ordinary concerns of life. My learned friends have produced here, Sir, a wonderful mass of authorities gathered from the adjudications under the modern law both in England and in the States of this country. But, Sir, as you know the rules of evidence, nay, the principles of law as applicable to distinct communities and to the States of our own confederacy, are regulated by the special legislation of each State, differing in each, conflicting in each, founded upon adverse principles, sustaining diverse policies as they are instigated by the particular notions of the special communities to which they are to be applied.

MODERN IDEAS THE TRUER GUIDES.

And how is this question to be adjudged, Sir? By the law of England as it was, or by the law of England of to-day? By the legislation of our associated States, or by the legislation and the law and the policy of the State of New-York? Certainly, Sir, by the latter, and what need to gather those ancient authorities pronounced under a rule and a policy inapplicable to the present condition of our society, and asserting none of the rights which, by modern legislation, have been conferred mutually upon husband and wife. My friends have been digging among fossils of a past generation. They are gathering here the dead carcasses of exploded theories and adjudications, and confronting them in ghastly contrast with what professes to be the improvement of modern times. Sir, we are not to be governed by them. Your Honor is to decide this case in consonance with the ideas of this day, as they are established by the Legislature and the law of this State, guided, I admit, by those general considerations of propriety, and by those rules which govern the construction and applications of statutes and decisions. For examining those, Sir, in answer to the illustration of my learned friend, and to aid somewhat the idea of the real unpractical issue which is presented by this objection, permit me to follow him in an illustration. I imagine, Sir, a happy and honored and a cultured home. The wife a frail and feeble and delicate woman, eminently devotional and pious in all her impulses, and, as has been shown in this case, and will be shown hereafter, devoted to the husband of her early choice and the father of her children. She had a pastor, learned and eminent, gifted beyond his fellows, one who stood at the very head of his honored and sacred profession, one whose words were listened to with deference and with acceptance. Ah! Sir, he had those qualities of mind and heart; he had that persuasive power of eloquence, that insidious and silver tongue which would lure an angel from its paradise. He was her accepted and chosen teacher and guide. She looked up to him with a veneration second only to that with which she regarded her God. Nay, if an incarnate Christ had come down with the glory of Calvary upon his brow and the love or sacrifice in his eyes, she could not have bowed to him with more obedience and idolatrous deference than this woman rendered to her pastor and her earthly God. From her childhood, Sir, she was under his teaching and



dominion. He was almost an inmate of her home. In the confidence of a husband and a friend, a pupil of this aged and venerable and gifted man, he was welcomed with confidence and affection. He exerted upon her, Sir, all his arts, his specious wisdom, his prayerful devotion. All the efforts of his gifted nature were banded to the seduction of this happy and beloved wife and mother, and she fell. And do you wonder, Sir? Is she to be blamed for the act? Is this a prosecution of her? Is the action thereafter brought by her wronged husband an action against her for her condemnation? Oh! no, Sir. Consider how strong he was, and how weak she was. Consider how submissive she was to his teachings, and imagine with what a specious and insidious tongue he propounded to her the theory which he advanced, that fornication was but a natural expression of love! He taught her to believe in pious adultery. By slow, but by steady steps, he led her along upon frail paths to the precipice from which she fell. That seducer is brought into a court of justice to answer for his crime. Husband wronged, seducer guilty, stand before the immaculate justice of the law, and before which each has to answer for the deeds done in respect to this woman. And we are told, Sir—should be told, Sir, in such a case, according to the logic of my learned friend—that this aged and venerable and gifted seducer may take the stand and polish and apologize for his guilt, and present all the defenses of his practiced and learned ingenuity, and that the husband must be still and silent, and that this is the law—the law which is not a respecter of persons, a law which holds out steady and even justice to litigants before it, and with all the sophistry of his great powers, my learned friend subsidizes them to establish that doctrine of injustice and wrong. I say again, Sir, before your Honor will adopt any such conclusion, before you will approve any such doctrine, you must be driven to it by the force of an irresistible and legal logic. Thank God there is, in my belief, no such rule in the law of this State! There is no such injustice in the policy of our Legislature.

#### A REVIEW OF THE AUTHORITIES.

I do not propose, Sir, to examine at any considerable length authorities referred to or commented upon; but I understand my learned adversary to declare that the policy of the common law, excluding a husband and wife as witnesses for or against each other, is founded upon the harmony and inviolability of the domestic relation. I deny that proposition, Sir. It is maintained, undoubtedly, by many of the English authorities, and is in one authority in this State alluded to as the ground of exclusion, but in later and better considered authorities, I submit to your Honor, the dogma has no support whatever. And I refer again, Sir, to the case of *Marsh vs. Potter* already spoken of, to the opinion of Mr. Justice James, which is the most elaborate and thorough examination not only of the policy but the state of decision upon this subject which can be found in our own, or, I think, in any other reports, and which has been adopted and affirmed by the Court of Appeals.

"Upon the competency of witnesses," says this learned Judge, "the common law proceeded in distrust of human nature. It believed a witness thus interested to be incapable of verity, and there consequently grew up under it a system of re-

strictions which rarely, if ever, allowed the facts in a given case to come out fully, and was often the occasion of great hardship and injustice. The objections to such a system were too manifest to escape attention. Many thought the attainment of truth would be best promoted by opening every source of information in a given case, and that all persons cognizant of any fact bearing upon the case, and especially those ordinarily most conversant with them, the parties themselves should be permitted to speak. They expressed confidence in man, and a belief in the existence of human integrity. They believed in the capacity of human nature, although interested, to speak the truth, and in the ability of triers of questions of fact to detect falsehood. From such a basis of thought there have sprung up within a few years in England, and in some of the States of this country, radical changes in the admissibility and competency of persons as witnesses. A new system has developed itself, whose foundations are laid in common sense and on enlightened policy, and its superiority over the old is no longer questioned, except by the few who have no confidence in the present, no hope in the future, and who deem our only safety is in keeping fast anchored to the past."

Omitting a few paragraphs, Sir, he says:

"Actions between married persons should constitute no exception to the general rule of practice. Each represent well-defined rights of action, both as concerns property and personal rights. Suitors can institute them, courts must entertain them, and triers must decide them. So, in actions where husband and wife are co-plaintiffs or co-defendants, husband and wife may sue and be sued, and the husband must, in some instances, be sued with the wife. Such actions must be entertained and tried by the courts. The simple question, then, is, shall such actions be tried in the ordinary way, or by some exceptional method? Will the law, while it entertains them, say—that they shall be decided rightly, so far as practicable, or that it is a matter of no consequence how they are disposed of? Or, if their decision is a matter of some concern to the law, shall the means most approved for arriving at a result consonant with the dignity of the law and the rights of individuals in other cases be employed in those actions, or shall the triers be left to grope their way through a partial darkness to a conclusion? In other words, shall the husband's mouth be closed in his own behalf, while his wife is a co-party, though permitted to speak if sued alone?"

Indeed—

"though permitted to speak if sued alone, it is a rule of the common law that husband or wife cannot be witnesses for or against each other. The first branch is based entirely upon interest; the second upon interest and public policy. All persons interested in the action were at common law held incompetent to testify therein. This, of course, excluded the parties to the records. At common law the wife's civil existence was merged in that of the husband, and the two were regarded as but one person. She had no separate right of property or of action, and hence was excluded from being a witness in her husband's behalf. This identity of interest was also the real support of the rule excluding the wife as a witness against the husband. In consequence of this identity of interest"—[and in both senses the word "interest" is italicised]—"husband and wife uniformly appeared before the Court in a friendly attitude. Legally their relation was one of mutual confidence and harmony. There was every reason to fear, therefore, that in the event of the introduction of one of them at the suit of an adversary of the other some testimony would be elicited which would be detrimental to the interests of the other, and therefrom domestic ill-feeling and discord result. The peace of families would thus be jeopardized merely to subserve the pecuniary interests of third persons."

And he proceeds, Sir, in citing elementary authorities, and he concludes by saying:

"I think it clear, therefore, that the true principle which excludes the husband or the wife of the party from being a witness for or against each other was the union of interest and privilege existing between them."

And that privilege refers, Sir, to confidential communications, and has no connection with the idea of public policy, or with the harmony of the domestic relation.

"It is true, authorities could be cited which state that it is with a view of preserving the peace of families, and where it is said that the admission of such testimony would lead to dissension and unhappiness, and, probably, to perjury, and that the confidence existing between husband and wife should be sacredly cherished. But if those cases are carefully examined it will be found that this question, in its origin and cause, was not fully considered."

And then he proceeds to examine them, Sir, and says:

"With respect to the protection of confident communications between husband and wife there is good reason for such protection at all times."

But no such principle has been brought into practice.

"The decisions excluding husbands or wives of parties are often accompanied with sacred declarations in favor of such protection; but is the exclusion extended to all the testimony, whether it was confidential or not? and, as no protection was given to conjugal confidence in respect to witnesses, these parties were as much within the reason of the rule, as it existed, as the other class, it may be safely affirmed that no such rule has as yet been established. As to the authorities, most of the decisions in favor of excluding the wives of parties were given in cases where the husbands were excluded, and, therefore, no matter how strong may have been the expression of public policy, and in favor of preventing domestic discord, &c., all those conditions are consistent with the principle that interest was the ground of objection."

He then proceeds to reason upon the effect of the Code abolishing the disqualification of interest, and finally holds, in consonance with the opinions I have read to your Honor.

I ask your attention, Sir, to the case of *Wehrkamt vs. Willett*, to be found in the 4th volume of Abbott's Court of Appeals Decisions, at page 548. That was a case where the wife was a party plaintiff, and offered herself as a witness, and where the question was whether the property which had been seized by the sheriff, against whom the action was brought, belonged to the wife or to the husband. The question was whether she was a competent witness. It was held she was. And I read this, Sir, for two purposes. First, to maintain the doctrine asserted by Justice James, that the exclusion of the wife or the husband, as the case might be, was not founded upon the idea of domestic harmony; and, second, to show that in an action like the present, even at common law, the objection of being a party removed the husband or wife as a sole party, the other not being a party party would be competent as a witness. The Court says:

"The rule of the common law did not prohibit husband and wife from testifying in a civil action, unless one or the other or both were parties, or directly interested in the subject of the action. Here the husband was not a party, nor had he any such interest as would have disqualified the wife by strict common law rules. The action was in no proper sense against him. He made no claim to the property taken and sold by the defendant, and had no interest in the litigation, unless, indeed, to have his debts paid from property to which he laid no claim." \* \* \* "The code provides that a party to an action, etc., may be examined as a witness in his own behalf, or in behalf of any

other party, in the same manner, and subject to the same rules of examination as any other witness," except "that neither husband nor wife shall be required to disclose any communication made by one to the other." \* \* \* "The letter of the Statute certainly extends to married persons not having conflicting interests," [conflicting interest of parties,] "and the exception is a plain indication of the legislative intention to change or codify the common law rule as to the admissibility of husband and wife as witnesses."

And yet all the argument presented by my learned friend, all his glowing oratory concerning the sanctity and permanence of the domestic relation, are founded exclusively upon the doctrine of this law thus avowed by the Court of last resort to have been changed by the legislation of the present.

"The reason of the latter rule for not admitting husband and wife, as witnesses for each other, was because of an identity of interest; nor were they admitted against each other, because this was deemed contrary to the legal policy of marriage. 'Husband and wife,' says Blackstone, 'are not allowed to be evidence for or against each other, partly because it is impossible that their testimony should be indifferent, but principally because of the union of persons; and therefore if they were admitted to be witnesses for each other, they would contradict our maxim of law—'No one shall be a witness in his own cause;' and if against each other, they would contradict another maxim—'No one is obliged to convict himself.'"

And you see, Sir, upon what the policy of the common law rested; and you see how clearly this idea of unity, of identity of interest—I had almost said of person, certainly of heart—is abrogated by the laws of this State.

Says Baron Gilbert:

"If they (husband and wife) swear for each other, they are not believed, because their interests are absolutely the same, and therefore they can give no more credit when they attest for each other than when a man attests for himself; and it would be very hard if a wife should be allowed as evidence against her husband, when she cannot attest for him. Such a law would occasion implacable quarrels and divisions, and destroy the very legal policy of marriage; but of late years in this State, material and radical changes have been made in the law of husband and wife, and, in the law of evidence, and the competency and admissibility of witnesses, undermining, in a great degree, the uses of and practically abrogating the common law rule."

MR. FOLGER CITED.

Now, if your Honor please, it is the effort of my learned friend to re-establish that rule; to roll back the assumed course of progress and growth of legislation; to ask your Honor to reanimate the abrogated lessons and principles of the past; to rule in defiance not only of the policy but of the mandate of the present law of the State. And, hence, as I before remarked, all the authority, all the principles, all the notions of propriety, of delicacy, of public policy, which have been so eloquently advanced by my learned friend, are disposed of by these adjudications pronounced under a different policy and with different views; and which, as our Court of last resort says, was abrogated by the legislation of the past few years. I ask attention again, for a moment, to the case cited and commented upon by my learned friend, of *Southwick vs. Southwick* (49 New York). In that case, if your Honor please, the question presented was whether, in an action brought by the wife against her husband to recover an alleged balance of money



they were witnesses for or against each other in the action. Mr. Folger, eminent for his careful and learned analysis of the law, and for his patient industry in the formation of his opinions, says:

"The first question made in this case is, whether the defendant was properly admitted as a witness in his own behalf against the plaintiff, his wife. It is claimed that the provisions of the Act of 1867 (2 Laws of 1867, p. 22-21), do not enable the defendant to become a witness against his wife in an action in which they are the only antagonistic parties. I have reached the opposite conclusion. It must be conceded that the object of the enactment was to alter the common law rule, which forbade the husband or wife being a witness for or against the other."

I noticed a current remark of our learned adversary that, by the first section of the Act of 1867, although it would enable the wife to be a witness against the husband in an action brought by him against a third party, that it did not render the husband competent. That question, certainly, was considered in this case. The Court stated what was the object and the spirit of the law; and if you will follow the course of legislation, the tardy and reluctant steps by which it has been driven by public sentiment to reach its present condition, even as declared it this very authority, your Honor will find that the law of 1867 was enacted as but a complement to the other invasions upon common law principles previously established; that it was enacted for the very and avowed purpose of making the husband and wife competent for or against each other, with certain exceptions provided for in Section 2; that it was intended to uproot the old policy of the common law upon this subject; and, that the sentimental theories upon which that policy was founded had been abandoned by modern thought and modern enactment—beautiful, charming as they are, and fit subjects for the oratory of my learned friend as they are, but not fit subjects for discussion in a legal argument to a court of justice.

Judge Folger continues:

"I have reached the opposite conclusion. It must be considered that the object of the enactment was to alter the common law, which forbade the husband or wife being a witness for or against the other. Its object was to make available, in the trial of issues of evidence, the classes of witnesses whom the rules of the common law excluded. It designated this class as a husband of any party to the action, and as the wife of any party to the action. It declared that all persons falling within these designations should be competent and compellable to give evidence the same as any other witnesses; it declared, further, that they should be thus competent and compellable on behalf of any party to the action."

Now mark, Sir, the next sentence.

"It is conceded that when the husband or the wife is a party to the action and the other is not, that the husband or the wife so being a party to the action, as the case may be, is within the language of the statute."

That is the statute of 1867, where he is competent and compellable to be a witness. It was conceded, Sir, and assumed by Court and counsel, although this was an action between husband and wife, that if one alone was a party to the action, that one might be a witness in the action. And, Sir, it was upon a grave discussion as to the spirit and effect of this statute of 1867 before a learned Court, conducted by learned counsel; and on all sides it was conceded, it was assumed and declared by the Court as the conclusion accepted by itself, that

where the husband or the wife alone was a party as against the third person, that the husband or the wife, as the case might be, was a competent and compellable witness in that action. But it is contended that this language does not disclose an intention that he or she might be a witness for or against the other, where both are parties to the action and antagonistic in it. I ask your Honor's attention to another case in this authority. It is not necessary for me to read, Sir, the introductory review of the authorities—the English authorities and our own—preceding the paragraph which I think important. But, speaking of the old rule, he says;

"It was to be maintained for the sake of the present and the future, that by an adherence to the rule, for the public good"—[The public policy of my learned friend]—"that by an adherence to the rule for the public good, married folks might be assured of secrecy; neither death nor divorce could abrogate the rule, so it continued imperative upon the courts, and must after death or divorce be enforced for the sake of the public, though it could no longer help or harm the parties. But the statute in question discards the rule of the common law and abrogates it; and for us, save as to confidential communications, it no longer exists. Husband and wife may now and for the future be witnesses as to all which passes between them not having that quality."

That is the quality of confidential privileged communications. But, Sir, it is said that this is a destruction of conjugal felicity; that in its practical effect it must necessarily introduce wrangle, dissension into the domestic circle, and uproot the policy of unity and union upon which the principles and the decision of the common law rested. Well, Sir, the law should be uniform; if a public policy of that character is to be pursued, it should be universal. There should be no conflict of inconsistency in its application to the varied cases of human life; and how is it to be preserved, if, as our Court of Appeals in this case ruled, husband and wife may sue each other, and husband and wife may be witness against each other? Does it not involve, just as equally as the present example, conflict with this idea of domestic harmony? Is not the unity of the conjugal relation just as directly assailed? Will not discord and enmity in the household be equally nurtured and propagated by allowing husband and wife not only to sue each other, but when they are parties to an action, to be witnesses against each other, each swearing in support of their discordant interest, each testifying to mutual transactions between themselves, each maintaining an opposite theory of fact, and each reflecting upon the credibility and integrity of the other; and if this beautiful idea of unity and union and harmony exists to-day, how comes it that the doctrine of this case is established?

Suppose another case, Sir; suppose a husband brings an action against a third party, not for the seduction of his wife, but for enticing her from his home. These actions are quite common, Sir. Is the husband a witness there, and will anybody dispute it? And, yet, does not that action necessarily involve the quarrels and dissensions of private conjugal life? And in a case of that character the husband was called as a witness, as I will show your Honor. The answer in the case supposed set up that the husband was brutal, unkind; that he provided poorly for his family; that

the wife had just and reasonable cause for deserting her home. Why does that not at once suggest dissension, discord, separation, death to the family union? And, yet, the husband is a competent witness for or against himself, and may be called by the defendant against himself to ask the very facts alleged in the answer, and so, Sir, a witness for himself. And there, as between the husband and a third party, are introduced all the elements which strike at the very foundation and life of domestic felicity, utterly inconsistent, Sir, with the idea of my learned friend, and with a continuance of the common law upon which he rests his objection. I may as well here, Sir, refer to the case of 7th Robinson, 581, where, in an action for debauching and enticing away the plaintiff's wife, the answer alleged that the wife was compelled to leave the plaintiff's house by reason of his cruel and inhuman treatment, and immoral conduct, he having introduced a lewd woman into his house and kept her there for purposes of sexual intercourse. Held

"That the plaintiff being examined as a witness for the defendant before trial might be inquired as to the matter set up, and competent to answer."

It makes no difference that he was called against himself, for the rule of exclusion applied equally where the husband or wife was offered for or against her husband, and the principle of the rule of exclusion was equally applicable to the one condition as the other. Now your Honor will bear in mind that in this argument the question as to the inviolability of confidential communications is not involved at all. That is a question of privilege, not of the competency of the witness. As to all other matters husband and wife are competent, but they are not compellable to disclose these confidential communications. And I think, Sir, nine-tenths of the authorities produced by my learned friend from the common law but enunciate that doctrine; and all their beautiful theories are founded upon the idea in regard to these, the conferences and communications which spring out of the intimacy and the faith of conjugal life, neither husband nor wife can disclose them during the lives of the other nor after the death of the one. They are forever sacred—sacred to the privacy of that relation, while they are founded upon the faith of that privacy.

The progress, Sir, of legislation upon this subject has been very ably analyzed and presented by my learned friend; but will your Honor permit me to read again a short extract from the opinion of Justice James, upon which I have already drawn so largely. Your Honor will remember the slow and the struggling course of that legislation. First, Sir, the disability of interest was removed; then the disability of party, so far as to permit an adversary to call an opposite party; then it was removed as to all parties, with some exceptions, as connected with assignees, administrators, &c. Then you will perceive that, up to that period, all the impediments of the common law as to the competency of the witness were removed, except the single one of the disability of marriage. And then came the law of 1867, conceived in the spirit and enacted in the policy declared in the case of *Southwick vs. Southwick*, 49th N. Y. For the purpose of opening all the avenues of truth

founded upon a confidence, not only in the integrity, but in the intelligence of human nature;—first, in the integrity that, under the solemn sanction of an oath, witnesses would tell the truth; and, second, upon the intelligence of the Court and jury, that, if the witness wandered from the truth, the error could be detected and repaired. And so, Sir, Mr. Justice James says:

"Of late years material changes have been made in the law of husband and wife, both in this country and in England, but particularly in this State. The wife has been admitted to separate rights of property, and as a consequence to separate rights of action, even as against the husband himself. The marriage contract has lost its ancient feature of indissolubility, and actions between parties for the breach of it are constantly before the Courts, in the case of an action between these persons, whether in regard to some disputed property, or by the husband for a divorce, or by the wife for a separation. It is idle to assert that they stand before the Court in that amicable attitude in which in civil suits they invariably stood at common law. Radical changes have also been effected within the last sixteen years in the law of evidence and the admissibility of witnesses. England took the initiatory step by the passage of Lord Denman's Act of 1843. Its general feature was that no person offered as a witness in a civil case should be excluded by reason of incapacity from crime or from interest, with the proviso that the same should not extend to the party to the record, and some others enumerated, nor the husband and wife of such person respectively. Lord Brougham's Act was passed in 1851. The first section repealed all the proviso of Lord Denman's Act except that relating to husband and wife. The second section made the parties to actions competent witnesses. The third section made husbands and wives of parties in criminal proceedings incompetent; and the fourth section rendered the statute inapplicable to actions founded upon adultery or breach of promise of marriage."

But, Sir, I will not trouble your Honor with reading more.

Judge Neilson—Will it be convenient to suspend here for recess?

Mr. Beach—Yes, Sir; I had hoped to conclude my argument before the recess, but I can suspend here.

The Court then took a recess of an hour.

MR. BEECHER'S OWN WORDS TURNED AGAINST HIM.

The Court met at 2 p. m., pursuant to adjournment, and Mr. Beach resumed his address.

Mr. Beach—If your Honor please, as I understood the argument of the learned gentleman upon the other side, it was divided into two branches; the first rested upon the ancient rule and policy of the common law, and the other was founded upon the special legislation of this State. The first I have considered so far as it appears to me important or justifiable in view of the argument of my learned colleague, and I pass from it with the single remark that this case presents this singular peculiarity, that the defendant hitherto has published his demand to all the world for the production of all possible evidence that could be produced against him. To all the earth he has given a public challenge demanding that everybody who can throw any light upon this mixed and troubled controversy should appear and present it. To-day, through his counsel, he seeks to close the principal avenue of evidence. To his adversary, whom, a while ago, he called upon to appear



before his chosen tribunal and exhibit his proofs, he makes the objection of incompetency. It is not for me to say, Sir, whether the confidence of that challenge rested upon the circumstance that the revelations were to be made before his own chosen judges, appointed by and ruled by himself, and that to-day that challenge is answered before a reliable and competent tribunal and under the sanction of judicial law. At any rate, it is a remarkable inconsistency, and the imagination will necessarily rove in the fancy for the reasons which should thus have altered the tone of confidence and defiance on the part of this defendant.

#### THE SIGNIFICANCE OF THE TRIAL.

But, Sir, this litigation, although represented by my learned friend as a mercenary pursuit upon the part of this plaintiff of money compensation, to which I shall allude hereafter, is by no means an action of that character. It includes questions of higher interest to the community and to the parties. Its object is far purer and mightier than the mere consideration of damages. It looks to the vindication of one for whom vindication is necessary—that is, the plaintiff in this action. It involves the question whether a prominent and eminent leader of the Christianity of the age is to be stricken down by the scorn and condemnation of mankind; and the vast interest which rolls around this case, as connected with these public and far-reaching consequences, is a far higher and greater consideration than the technical and simple question of the ultimate judgment for mere damages which is to be expected alone from this Jury. Undoubtedly, Sir, the counsel for this defendant, in the pursuit of their duty, are quite entitled to present any technical objection to the admission of evidence which may to their judgment appear appropriate and proper; but, whether they know it or not, those objections which seek to exclude light and to still hide in darkness the alleged sin of this defendant, reflect no credit upon his character, and will not aid in the effort at his justification.

#### MORE ABOUT JUSTICE SMITH'S DECISION.

I pass now, Sir, to a very brief consideration of the Law of 1867, and the decision of Mr. Justice Smith, and as I read that decision, Sir, far greater import has been given to it than it deserves. Your Honor will be good enough to perceive that the simple question decided in this case is that the husband, in an action brought by himself for criminal conversation with his wife, was not a competent witness to prove the fact of marriage, and that fact alone. He was not offered as a witness generally in the case to sustain the allegation of seduction, but, as the statement of the case and the opinion of the Court says, the single proposition of fact to which he was tendered was to prove the marriage between himself and his wife. And mark the reason of the Court. After the statement of the case, which is:

"At the trial at the Onondaga Circuit, the plaintiff, to prove his marriage, was offered as a witness on his own behalf. This was objected to by the defendant, the objection sustained, and the evidence excluded, to which the plaintiff excepted."

It is not necessary to state, Sir, the preliminary circumstances

which led to the necessity of his being offered upon that single and exclusive fact, but the Court say:

"It has long been settled that in actions for criminal conversation and divorce, and in prosecutions for bigamy, an actual marriage must be proved, and that in these cases the cohabitation of the parties as man and wife, their declarations or admissions, or the reputation of an existing marriage, or the plaintiff's acknowledgment of the woman as his wife, and holding her out as such to his friends and acquaintances, and her reception in the family as such, are not sufficient to maintain the suit."

And he refers to a number of authorities, and says:

"The proof offered by the witness Dann, the plaintiff, was of the class held sufficient, and was properly excluded within these cases."

And that was the ruling, and that was the whole extent of the decision. Then it was argued on the part of the appellant that he was a witness, made a witness under the Act of 1867, and the Court passed upon that very grave and important question with the simple remark, read by my learned colleague, but which I wish to repeat: "The plaintiff was not a competent witness." For what? Not a competent witness in the case? No, Sir: he was not offered as such; he was not passed upon as such. The plaintiff was not a competent witness to prove such marriage, and to that extent, and to that only, did the Court construe the application of the Act of 1867. The Court proceeds to say:

"The Act of 1867, to enable husband and wife to be witnesses for or against each other, expressly excepts the cases where the question of adultery of the husband or the wife is in controversy, except to prove a former marriage in case of bigamy, and the fact of marriage in actions for divorce."

And with that single remark, Sir, without any examination of previous authorities, without any investigation of the principle or the policy of the Act of 1867, the Court passes that very important question. I submit to your Honor that in itself it is not a decision upon the point which is now presented, where the plaintiff is offered as a witness generally in the case, not only as to the fact of seduction or adultery, but to all the other questions of collateral importance, and upon collateral issues which have arisen and will necessarily arise in the course of the investigation. Now, Sir, I think I may be pardoned in making one single additional suggestion, sufficiently intimated perhaps, by my learned colleague, upon this law of 1867. It has been read to your Honor. By its first section it makes husband and wife competent witnesses in all cases, without any limitation. Comments upon this Act expressive of its spirit, and policy, and effect, I have read to your Honor from the decisions of the Court of Appeals. Its object, its purpose was to remove that single remaining impediment from the competency of all witnesses in all cases, subject to the limitations contained in section 2 of the Act. That is declared by the court of last resort. Now, the error of Justice Smith arose from a superficial consideration of the limitations contained in section 2. He evidently misapprehended the effect of that section; evidently he misapplied it, as the ordinary common sense and intelligence of any gentleman will lead him to perceive on listening to the simple reading of the section:

"Nothing herein contained shall render any husband or wife

competent or compellable to give evidence for or against the other."

In any of the actions enumerated, of which we may assume this to be one. Now, Sir, the test, the soul of this section is the words "for or against each other." By the first section they are made competent witnesses in all actions and upon all occasions and between all parties. The Legislature then say that section shall not be construed as qualifying them as witnesses for or against each other. Is not that, Sir, the clear reading, the plain, intelligible, unambiguous language of the statute, and before either is disqualified under that section, must it not appear that he or she is offered as a witness for or against the other? And is it conceivable that any judicial mind brought deliberately to the consideration of that section can misconceive its import and the principle which it intends to announce, that principle being simply, although the impediments of the common law are removed, although the ideas of the unity of the marriage relation are exploded, although the fact of actions between husband and wife, and testimony from husband and wife, may destroy the sentiments of the connubial relation, nevertheless they shall not be witnesses for or against each other. Then the question at once arises, Sir, in an action of this character, brought against the seducer, is the husband competent to testify against him? And still, leaning upon the exploded notions of the common law, my friend contends he is not, because it would interrupt and destroy the unity and harmony of the conjugal relation.

But, Sir, this is not an action against the wife. She is not a party. As is conceded, she cannot be a witness. It seeks no remedy against her. It asks no judgment against her; and whatever may be the final determination of this action, she yet stands before the world and the law as the legal wedded wife of Theodore Tilton. Whatever judgment you may enter is powerless to strip her of a single wifely right. She is the wife of this plaintiff, entitled to all the legal consideration, a claimant for all the legal duties arising out of that relation. And how, then, can the testimony of the husband in this cause be considered as either for or against her? Those terms must be applied in a legal sense. He must be a witness against her in a legal meaning. She must be a party, or else the judgment must be such as will affect and conclude her interests. I have shown your Honor, I think, that no such consequences can be claimed from the result of this litigation. To-morrow or to-day she might file her bill for a divorce. To-morrow or to-day she might commence her action for a legal separation and for alimony. To-morrow or to-day, girded by the law of the land, notwithstanding her inexcusable desertion of her husband's home, she may appear on its threshold and demand admission as wife. Does anybody dispute it? Are the difficulties between these two parties at all affected by the miserable occurrence of the past year or of the past four years? No, Sir; and my friends perceive, must perceive, this attitude, this relation as between this husband and wife.

Now, my friend has referred you to the case in 46 Barbour, showing that this is the true construction of the language of this section, "for or against each other," showing in an action of crim.

con. as between the husband and the seducer, the wife has no such legal relation to the litigation as to constitute an interest in herself, and by abundant authority he has shown you that that other idea of the exclusion of the one or the other on account of the effect or object of the testimony when offered to stigmatize or criminate the other, is exploded by the authorities of this and of sister States. I will not again refer, Sir, as I had intended, to the decision of Southwick vs. Southwick, in the 49 of New York. If your Honor shall be inclined to examine the case, I think you will find that it sustains the views which have been presented.

#### CLOSING OBSERVATIONS ON THE OBJECTION.

Now, Sir, what is left of the objection? Under the light of this legislation and these authorities, with these judicial commentaries upon the spirit and effect of the successive acts remaining, the impediments to the introduction of witnesses, and to the light of all possible evidence, it being shown that the doctrines of the common law have been exploded by recent legislation, it having been over and over again asserted by the highest court of this State, what remains, I repeat, of the objection, and why is it, either upon authority or upon principle, that this plaintiff is excluded from that witness stand?

#### DARKER ASPECTS OF THE CASE.

I am at a loss, Sir, to perceive upon what theory, upon what principle, upon what principle either of policy or of law, that exclusion can be maintained. I know that evidence may be drawn from this witness, if sworn, which will reflect upon the chastity and the honor of his wife. I know that fact has given and will give to my learned friend an opportunity to decant upon the horrid and the barbarous appearance of such disagreement and controversy between parties so holily and dearly connected; and he has drawn a painful and pitiful picture of the deserted and wronged wife, dishonored and crushed by the testimony of a husband in eager chase after the gold of his adversary. He has presented this wife in an argumentative allegory, as listening to the accusations of her husband, hearing the revelation of her confessed dishonor published to all the world, and yet compelled to sit silent, without a possible answer from her lips to the supposed calumny. But the answer of the law is that which I have already given, Sir, that she is not interested in the event of this suit, that her rights are unimpaired and untouched, and she may claim all the privileges of the relation existing between her and the plaintiff. But that picture, Sir, has another side. Will that be the first revelation of her asserted guilt? Will the testimony from the lips of the husband be the first dark shadow which gathers upon her womanly and wifely character? In this or in any other conceivable case of seduction, is it the action like this, or the testimony in the action like this, which crushes and ruins womanhood? No, Sir, no, Sir. The shame, the disgrace, the destruction which this wife suffers, and must suffer, starts earlier in the history of this unfortunate transaction. It is not the husband who reveals the wife's dishonor; it is the seducer, Sir. Long before this action was commenced, the dark cloud had enshrouded this wife. This action was not commenced until that wife,



stimulation by her seducer, had deserted the house of her husband. This action was not commenced until that wife, led by that seducer, appeared before *his* chosen tribunal, and vented her spleen and indignation against this husband. Long before this action was commenced, the shadow had fallen over that household, and a happy and honored home was distracted and dissevered. The argument does not apply, Sir. The picture is not appropriate to this occasion or this case. It is not appropriate to any occasion, because I assert it as an invariable principle, that the dishonor and the ruin which follows the path of the seducer commences long before the husband is apprised of his own dishonor. It comes, Sir, in alienated love; it comes in inevitable discord and contention; it comes, at last, in the clear revelation to the distracted heart of the husband of his wife's seduction and dishonor. Whatever may be said by Theodore Tilton upon that stand will not add a jot or tittle to the agony, the shame or the remorse of that wife.

#### MONEY NOT SOUGHT BY THE PLAINTIFF.

But this is a suit for money, Sir; my client is represented as thus treading over the reputation and the honor of his wife in a greedy chase after the gold of this defendant. Why, Sir, did not the counsel know better? If not, his associate and your Honor know better. How long ago was it that in this cause, and before your Honor, the proffer was made to abandon this action for damages, if my learned friends would but press forward their intimation for a libel in asserting the adultery of this defendant with his wife. Theodore Tilton seeks no damages from this defendant. He would not stain and burn his palm with his gold; but he seeks, Sir, a vindication. The sin of this defendant has followed him with destructive efficacy. This defendant has gathered around him the comments and the condemnation of society; his fortunes have been prostrated. Those consequences which always follow in the path of guilt, and especially of this sin, have clung to him with an iron tenacity. Must he sit silent, Sir? Is there no redress? For the wronged husband and the violated home, does the law afford no vengeance? Why, Sir, it is, I think, a shame, although I believe I differ with my learned colleague in that respect; but I think it a burning shame to the law of this State, and of every other State where that law is wanting, that the seducer may not be pursued as a criminal; that licentiousness of this character is not punished by the heaviest judgment of the law, as it was condemned and punished by that infallible law which knows no error. But no remedy is given, Sir. What must Theodore Tilton do? Must he suffer the animadversions of society? Must he lose wife and home, and see the seducer triumphant flourishing, glorying in his impunity, the happiest man in all this assembly? [Applause.] Does the law afford no redress? None adequate, Sir; and the only resource left to my client, given him by the law, was this action, or to take that other remedy condemned by the law of the State, but sanctioned by the common law of humanity, which reaches the heart and the life of the seducer. And had he done that, Sir, instead of standing before your Honor in his appeal for vindication and

justice, he would have been arraigned as a criminal, and in danger of his life. But yet my friends reproach us for bringing this action. "You should be quiet, Mr. Tilton; you should not venture to accuse Henry Ward Beecher of adultery, because, forsooth, it implicates and criminales your wife; you have lost her love and society; it has been won from you by the specious seductions of this defendant. Your home is desecrated and dishonored and your fortunes withered and destroyed, and the seducer, I repeat, is glorying in his impunity from punishment. But, still, be quiet; and, if you venture to adopt the only remedy which the law gives you, eloquent counsel shall hold you up to the scorn and contempt of a Court and a jury and all mankind."

Well, Sir, to my mind there is something excessively repugnant in this idea of a civil action founded upon seduction. It hurts the better sentiments of our nature. It revolts that affection upon which family and home rest, and upon which society and government depend. But, when the law leaves no other remedy than that; aye, Sir, when the law gives to the dishonored husband no other revenge but that, consistently with its own teachings, it ill becomes the ministers of the law to reproach the husband who resorts to that redress. Now, Sir, I am aware that these thoughts and remarks are not pertinent to this discussion. They do not belong to the law of this argument; and, it is only because my learned friend, in his specious and insidious way, sought to inculcate this idea of disgrace and dishonor from the mere fact of bringing this action that I have wandered from the correct path of discussion, for the purpose of remedying that great mistake and wrong. This is all, Sir, I have to submit to your Honor. I can but repeat the spirit of the argument which my learned colleague and myself have addressed to you. I can but implore you, out of regard for the great interests involved in your decision of this question, out of regard for those great questions of law and of public policy which are necessarily involved in the discussion and in the decision, to examine it with deliberation and care (if the attention of your Honor has not already been directed to this question), and to give us a decision which shall be in harmony with the spirit, if I may call it, of our present civilization; a decision which shall not stand in repugnance to the principles which have been announced so repeatedly, so emphatically, by the highest Courts of our State.

#### DEFENSE'S COUNSEL CLOSE THE ARGUMENT.

Mr. Evarts replied to the arguments of Gen. Pryor and Mr. Beach, closing—as he had opened—the question on the part of the defense. His arguments occupied the remainder of the day. Judge Neilson will deliver a verbal decision on the question Monday morning.

#### MR. EVARTS'S REPLY.

Mr. Evarts—The aversion that my learned friend avows to this money action by a husband respecting the honor of his wife is an aversion that is shared by the law, and by morals, and by society. And, what my learned friend well understands, and your Honor, it never was tolerated in the

remedies of jurisprudence upon its own motive or for its own sake. It was in the system of the judicial procedures of the country from which we take our law, only as a step of sincere and honest investigation, before a jury, of the fact; because the final remedy of the law which gave, for this great cause, divorce, could only be exerted by Parliament; not upon petitions or examinations in committee rooms and by confessions and collusions, but what the law regarded as an open and sincere investigation of the fact, in which the husband, governed by every consideration that should withhold him if he was not sincere, impelled to it by no possibility of motive, except the requirements of the law that forbade his divorce, except by this public demonstration of the reality of the crime, should, before a jury and in the form of an action against the injurer of his domestic peace, establish the fact, in order that Parliament might grant him a divorce upon that established fact. And when the English law gave to ordinary judicial inquiries the method and the result of divorce upon judicial investigation, it suppressed the iniquity and the disgrace of the action for criminal conversation; permitted no husband, who did not pursue his wife with the honest purpose of divorce, to open his mouth or raise his hand against her in any court of justice; permitted only a union of a co-respondent, the deceiver as a part of the procedure of divorce, and excluded a husband who "had condoned his wife's fault"—and so never could be heard to ask for a divorce—from raising the question of inquiry or of proof against any alleged deceiver. And now it is to the credit of our jurisprudence, and the morality and dignity and manliness of our people, that while now for a long time our courts have had this jurisdiction of divorce, cases for criminal conversation have disappeared from the annals of our law, except in the very lower ranks of life and under the grave suspicion that it was for lucre's sake that the action was brought. And why? No longer necessary by a system of law that made the investigation useful or important toward a divorce, the sincerity of a husband who did not desire divorce and yet did desire money or vengeance (as my learned friend has not scrupled to call the motive of this action) was not treated by the law as consistent with the morals of society or with the purposes of the administration of justice. The solemn, the universal injunction of the law to a husband who finds fault thus in his wife is that he shall then speak or forever after hold his tongue; and if he pardons and renews the embraces of marriage, no Court hears his further complaint in any desire of separation from his wife. In England the same fact closes all inquiry, in every form, concerning the fact thus buried forever and destroyed.

Now, if your Honor please, in all that I had to say concerning the presentation of this plaintiff as a witness, to prove his wife's adultery. I spoke wholly upon the principles and the theory of law and society, I gave him the benefit of the proposition, of the basis of the argument, that he was coming here to prove the thing, and that it must be assumed, for the purpose of my argument, to your Honor that what proof he gave would tend in that direction, and might produce that result. And my learned friend

has found in that an excuse, in the middle of the plaintiff's case, to assume for invective and vituperation, as in a closed and completed trial, the truth of the charges against this defendant. So imprudent, so injurious a method to the cause of this plaintiff, but one consideration could have misled my learned friend into, and that was this—that at no future stage of this case would the state of the proofs have given him such support and justification as now.

Now, if your Honor please, what is the question of law, and how have the authorities and the discussions of my learned friend varied from or impugned any proposition that I make? We are discussing the question of the admissibility of this plaintiff upon the law of evidence and the law of the married relation, as they concurrently exist in this State at the present time. And I submitted to your Honor, and I do not find any impression made to the contrary of this proposition, that, under the Code, dealing with the law of evidence in its general direction, there is no pretence that it opens the mouth of the husband or wife in any regard whatever where the principles of the common law excluded them. My learned friends have thought it worth their while to occupy a great part of their attention, and of the time of the court, in a careful examination of a series of decisions which were based upon a law of 1837, concerning evidence, a provision in the Code which, by some unhappy constructions, or some unfortunate looseness, let in the idea that in opening witnesses who formerly were excluded for interest, thereby husband and wife were admissible on the ground that interest was the basis of their exclusion. Those cases of *Potter vs. Marsh*, and *Wehrkampt vs. Willett*, and several other cases cited in that connection, whether the reason was good or bad, whether it was ineffectual or whether it gave some practical rule or not, have all become unimportant for this present discussion, because that regulation of the law of evidence has been repealed, and the general law of evidence stands now upon the Code as it has read since 1869, which by no possibility can be tortured into any other effect than the generalization that interest shall no longer exclude, and that the fact of being a party shall not place that party on any other plane of being a witness than if he were not a party. Now, my learned friend who first addressed you for the introduction of the witness no doubt undertook to say and to think that there was something in that state of the law that I have spoken of that in terms permitted the introduction of the husband or wife as witnesses. And so far as there was a phrase of that kind, it was, perhaps, in great part, the basis of the reasoning which finally came to an end by the experience of the community, of the profession, and of the Judges, which led to the final position on the subject of the general rules of evidence found in the Code of 1869. All the reasoning, then, of Judge James, in this case of *Potter vs. Marsh*, is wholly unimportant now. And that Judge James himself, before the change of the statutory law, did not regard the doctrine of competency for husband and wife, now contended for, as embraced in the then state of the law, is to be found in the case of *Chamberlain vs. the People*, in the Court of Appeals, in the 23d of New-York. I read from page 88:



"In thus holding, it does not follow that the evidence given on the hearing was admissible. On the contrary, I am clearly of the opinion that it was not. A rule of law intervenes to prevent it. It is well settled that neither husband nor wife are competent to prove non-access during wedlock, whatever may be the form of legal proceedings or whomsoever may be the parties thereto"—citing the case to which I call your Honor's attention. "This rule was established independently of any possible motives of interest in the particular case, upon principles of public policy and decency, and it has not been and was not intended to be changed or affected by the Code."

Mr. Beach—Mr. Evarts, will you permit me to refer you to a paragraph in that case which adopts and approves the decision of *Potter vs. Marsh*, in the 30 of Barbour—a preceding paragraph which you did not observe?

Mr. Evarts—But the difficulty is that the Court did not concur in that observation.

Mr. Beach—Certainly; it was in the opinion of the same Judge.

#### THE GAUNTLET OF DEBATE DROPPED AND ACCEPTED.

Mr. Evarts—Yes, but not of the Court; the Court did not pass upon the question of the competency of husband and wife as witnesses against each other generally in a suit between them. Now, that was a point upon which Justice James continued his observations that he had made in *Potter vs. Marsh*. But, notwithstanding those observations and his adherence to them, he did not pretend that the rule, as he contended for it in *Potter vs. Marsh*, covered the proposition that the husband or wife could not testify against the credit and fame of the other. It must then appear very plain to your Honor that the law governing the admissibility of husband or wife as witnesses against or for one another in suits, all suits, finds its present home and support, limits and authority, in the statute of 1867. Will my learned friends point to any statute in this State that enables husband and wife to testify, at the present moment, except that statute of 1867? I challenge contradiction of that proposition. That law is the only statutory authority enabling or restricting—within the ability conferred—husband and wife to appear as witnesses for or against one another in the cases that are within its purview.

Mr. Beach—That challenge should not go entirely unanswered, Sir. By reference to the case of *Southwick vs. Southwick* in the 49th of New-York, your Honor will perceive, without an examination of previous determinations, that it was considered as an open question upon which there was considerable diversity of judicial sentiment, whether or not husband and wife were made competent witnesses for or against each other by the enactments of the Code of Procedure, by those enactments of the Code which at present abolish the incompetency on the ground of interest or of being a party to the action, And all the decisions which are culminated in the remarks in the 49th New-York were passed, not upon the peculiar provisions of the section of the Code of 1857, but upon the proposition that the disabilities of interest and of being parties to the action have been abolished.

Mr. Evarts—Well, I do not understand my challenge to be met, for I do not understand that there is now a proposition, in

any of the courts of this State, that, under the general removal of interest as a bar to competency, husband and wife come in, or, that under the provision that being a party shall not exclude as a witness, there is any enabling authority in a party to testify beyond what he could as a witness if he were not a party. Now, the case in the 9th of New-York to which I call your Honor's attention, while these vague, uncertain determinations and loose language of the Code still remained the subjects of judicial debate, settled finally that the removal of the disqualification of interest did not introduce husband and wife, but that they stood upon the law of marriage. I need add but one authority to those to which I call your Honor's attention, and that is of the greatest authority, and the present modern law as declared by that great authority. I mean the Supreme Court of the United States, in the case of *Lucas vs. Brooks*, in the 18th of Wallace's Reports, page 452, decided in October, 1873. The first is that the Court refused to admit in evidence the deposition of Catherine Lucas, the wife of the defendant; that it is a rule of the common law, a wife cannot be received as a witness for or against her husband, except in suits between them, or in criminal cases where he is prosecuted for wrong done to her, is not controverted. But, it is argued, because Congress has enacted that in civil actions in the courts of the United States, there shall be no exclusion of any witness because he is a party to or interested in the issue tried, the wife is competent to testify for her husband. Now, that is the very question that has been argued at such length.

Mr. Beach—Oh, no—

Mr. Evarts—On the effect of these earlier statutes and of the Code.

Mr. Beach—Oh!

Mr. Evarts—The only question which you argued upon that, was precisely that. Undoubtedly the Act of Congress has cut up by the roots all objections to the competency of a witness on account of interest; but the objection to the wife's testifying on behalf of her husband is not and never has been that she has any interest in the issue to which he is a party. It rests solely upon public policy. To that the statute has no application. Now, in the case, "*In re Rideout's Trusts*," (10th of Equity Cases, Law Reports, English,) Vice-Chancellor James holds, when appealed to to say that this legislation in regard to the admissibility of evidence, let in the husband and wife—

Mr. Beach—What page is that?

Mr. Evarts—Page 44.

"Now, I do not like to say that the effect of the statute is to supersede the old rule. If it be so, it will now be in the power of any husband or wife alone to bastardize issue. I am afraid you must give me some other evidence."

Chief Justice Redfield, in Vermont, an authority well known to us both in his judicial capacity as general commentator, rules in the case of *Manchester vs. Manchester*, that a wife cannot become a witness under the Act of 1852 for or against her husband in any civil suit or proceeding, the Act of 1852 being the Act concerning the removal of disability of interest,

and being a party and equal in all respects to our Statute. Word for word, my learned friend says, with our statute. And, may it please your Honor, by the law of this State, there never was any pretense that the rule of marital exclusion was restricted to cases where the conjux, the party in the marriage, to be affected is a party even to cases where at least one was a party. The rule was amended in *Babcock vs. Booth*, where neither was a party, a case precisely like *Hasbrouck vs. Vandervoort* in the 9th of New-York, where neither was a party and where the husband was excluded because his wife had an interest although his wife would have been competent.

In *O'Connor vs. Majoribanks* (5th Scott, new R.), neither was a party and yet the wife was excluded; and this, the leading English case, is fully recognized and adopted as representing the true rule of the Court of Appeals, as I have shown your Honor in the case of *Hasbrouck vs. Vandervoort* and *Southwick vs. Southwick*.

The case of the *Royal Insurance Co. vs. Noble*, in the 5th of Abbott, in the Court of Common Pleas of the City of New-York, a court of the same important jurisdiction with your Honor's Court, Judge Barrett says:

"I am still of the opinion that the facts stated in the affidavit of King are admissible. The evidence of husband and wife is undoubtedly receivable in a collateral proceeding for the purpose of proving any fact material to the issue, and that although the facts so testified to by the one may tend to criminate or contradict the other. The fact is admitted as bearing upon the issue, and that without reference to its tendency; but there is no authority for admitting either husband or wife in any proceeding whatever for the sole and direct purpose of impeaching the other's testimony."

And why not? Because it was an attack upon the other in regard to morality, in regard to crime.

Roscoe, on the law *nisi prius*, the same commentator whom my learned friend cited on the criminal law, says:

"So, though not a party to the suit, neither the wife nor husband of an incompetent witness was competent."

Now the proposition is made that, in the present state of our laws, although this husband would be excluded from maintaining, as a witness, the issue of his wife's adultery (which is the only issue in this case), although he be excluded from that, if adultery were criminally punishable in our courts, yet the rules of law which protect the husband and wife against each other's testimony are regulated and controlled by the proposition whether the public law makes it a crime. Well, now, that is a novel proposition, and for some causes in which the courts of other States have been led into the proposition rather apparently to find some rule of demarkation than being satisfied upon the principle, for the leading case from New-Jersey, relied upon by our learned friend, was a case where the learned Judge refuses the proposition made to him to enlarge the rule of admission even over that obstacle—refuses to do so, states his own opinion that it ought to cover the question of adultery, even when adultery is not a crime, and then excludes the witness because adultery was a crime, and therefore in either view the law was to be excluded. I say that is a novelty. For all the English doctrine grew up and was enforced under a system of the law where adultery was not a crime, and

yet it is spoken of as a *crime* in the courts. It is spoken of as *criminating* the party. It is spoken of as within the rule that a witness is not compelled to criminate himself. He was not obliged to admit, in answer to questions for a true sexual connection, adulteries or not adulteries, that would criminate himself. When, therefore, our courts and the English courts lay down the rule that a husband or wife shall not be allowed to testify to any matters that criminate the other, nobody in England was shrewd enough to raise the objection that that means the crime that can be best punished by fine or imprisonment under statute or common law. These bastardy cases involved nothing but adultery, and yet the mouths of husband and wife were closed upon that. Why? Because it criminated the other party to the conjugal relation.

#### RECENT DECISIONS CITED TO SUSTAIN OBJECTION.

Now, the law of all these States confessedly excludes, both in the maintenance of the public justice or of any private remedies, the testimony of the husband or the wife to the adultery of the other. Maine, New-Hampshire, Vermont, Connecticut, Massachusetts, New-Jersey and North Carolina, those States also having statutes, make adultery criminal. Now, no case is produced in this State that undertakes to say that in an action of this kind the wife or husband may thus criminate the other upon an issue of adultery, because it is not made a public crime. And the English cases to which I now call your attention conclusively show that in that country the legal epithet and description of charges of this kind is criminal and incriminating. I refer your Honor to *Faussett vs. Faussett*, in the 7th note of ecclesiastical cases, pages 72, 94.

"It is true this is not a criminal proceeding,"—this was in the ecclesiastical court—"to lead to any punishment of the nature of fine or imprisonment, but nevertheless in every suit for a divorce by reason of adultery itself, a question of guilty or not guilty of a crime,"

and the evidence is excluded.

The case of *King vs. King*, in 3d Robertson English Ecclesiastical Reports, Dr. Lushington says:

"The right of a party to exclude answers depends on the form of proceeding. If the suit be prosecuted by articles, on no account can answers be at all exacted. In a civil case a contrary rule prevails. Answers are due, but ingrafted on that rule is this exception: that the party giving his answers is entitled to object to answer to so much of a plea as may criminate him. The question which I have now to determine is whether the husband is entitled to final answers to his libel. When I suggested to counsel to confine themselves to the 16th article of the libel, I did so considering that the validity of the agreement would be better tried on that than the other articles. Looking at the averment standing in that article without reference to any other part of the libel it would certainly be extremely difficult for me to say there is any circumstance which could criminate the wife; but unless those averments tend in some way to establish the charge against her, I cannot understand why they were introduced. The chain of evidence is to be completed by a line of links. How far any one may be important or unimportant, I am not in a position to determine."

And that, at that stage of the proof, although on the mere purport of the questions, it might not appear that it tended to



criminate her in this sense concerning adultery, yet that she should not be compelled to answer in that behalf until it appeared that the effect of the questions was wholly innocent.

The case of *Schultes vs. Hodgson*, 1st Adams Ecclesiastical Reports, English, the question was in an ecclesiastical case touching the party's manner of correction of his excesses, more especially touching and concerning the crimes of fornication, adultery and incontinency committed by him and complained thereof.

"In criminal suits the defendant's answers upon oath are not to be required even to thus adduce the positions which are not in themselves criminatory."

But that is enough for us, if your Honor please, on this question—enough of authorities on this question—which in my learned friend's apprehension has nothing substantial in respect to the quality of the acts complained of to base a decision upon. It is made to rest entirely, not upon the quality of the act as criminal and in the appreciation of society, but upon the pretense of the Legislature in making it, or not making it a public crime.

In the case of *Southwick vs. Southwick*, Rexford, in the 6th of Cowan, page 254, the question arises in the form of whether a witness was bound or not to answer a question that carried that degree of imputation to him of illicit sexual connection, and the testimony was excluded, and the Court of Error upheld it as justifiably excluded, on the ground that it came within the law which protects a witness against criminating himself, and yet there was no indictable offense.

Mr. Beach—On the ground that the witness was not compelled to disgrace himself.

Mr. Evarts—The very cases I have read, in England, on the crimes of fornication, adultery and incontinency, a witness would not answer, and yet they were not indictable offenses. A very famous case, in which Lord Mansfield laid down the general rules of evidence as bearing upon a case of this kind, that is, a case of criminal conversation, establishing the proposition as the English law, that the action was called a criminal, and treated as a criminal one, though treated on the civil side of the court, and the same rigor and fullness of proofs is required on the part of a plaintiff in an action of this kind, as is required by the law for the conviction of a defendant in a criminal case, and under that the rule was established which occasioned so much inconvenience in the case of *Dann vs. Kingdom*, that the marriage must be proved in an action of *crim. con.* with the same formality and distinctness as in a criminal indictment, and that marriage by reputation could not be proved. So much, then, for that view.

Now, the question is also raised by our learned friends that this is not an action in which the husband is on one side, and the wife on the other. Wherever, if your Honor please, the issue is of the wife's adultery it is not a collateral suit; it is not a collateral proceeding; it is not an action of libel for imputed adultery to the husband or the wife; it is not an action for perjury, concerning evidence given on such a trial; it is the very trial itself in which the plaintiff proposes, as the cause of his action in his complaint, the adultery of the wife, and seeks his remedy against the defendant as the guilty party ac-

complishing that adultery with his wife. And, now, what becomes of the provisions of this law of 1867, which expressly says that its enabling clauses in respect to removal of disqualifications of witnesses that are husband and wife, shall not include the permission of any wife or husband to testify for or against the other in an action of criminal conversation. Did your Honor ever hear of an action of criminal conversation in which the husband was the plaintiff, and the wife a formal defendant? And, yet, this whole statute is stultified if this antagonism between husband and wife on this issue of the adultery of the wife is not one of those issues, and thus a form of action respecting that issue, which the second section of the statute of 1867 has denounced as not being within the competency according to testimony of husband and wife. I think my learned friends can make no answer to that, nor can any judicial astuteness find a reply to it. The meaning of the Legislature is plain. It is a meaning based upon, and in conformity with, the exclusions which the English statutes have retained, although in the race of liberalism in respect to testimony the English statutes have, if anything, outrun our own. But they have held on to this, though they open the mouths of husband and wife, as our statute does, in ordinary forms of legislation, and on ordinary issues they have, and we, following them, have opened the mouth of husband and wife to no single jot or tittle of evidence in an action in which adultery forms the subject of inquiry, whether it be divorce, bigamy or criminal conversation.

Mr. Pryor—Or breach of promise of marriage.

Mr. Evarts—That is not necessary for my purpose. Now, in this very valuable treatise of Taylor on Evidence, Vol. 2, page 1172, where the statutes are reviewed and presented in due collocation, that have enlarged the competency of witnesses either in respect of interest or as parties, or in connection with the marriage relation, he says:

"The first class of persons whose evidence is in general excluded comprises the parties to any suit or proceeding instituted in consequence of adultery. Any proceedings which have their origin based upon a fact of adultery has the support of the judicial inquiry,"

and this following the statute it is applied—and the citation I now read from is on page 1,177—in terms of inclusion to these actions:

"Although on proceedings for judicial separation, by reason of adultery, for dissolution of marriage, and for damages against the supposed adulterer, the parties to the record are, except to the limited extent just mentioned, incompetent witnesses, this doctrine of exclusion does not extend to other statutes instituted in the Divorce Court,"

—that is, suits for separation for cruelty, as your Honor knows, and other classes of limited divorce by the English law.

Now, there is no case in our courts in which it has been held that a witness, as matter of law, that a witness, husband or wife, could be a witness in a *crim. con.* case since the enlargement of the law of evidence. In *Bunnell vs. Greathead* (49 Barb., 109) it does not appear that the objection was taken at the trial; and it does appear from the grounds on which the new trial was asked that the objection could not

have been raised at the General Term. My learned friend has referred to that case as a case that was considered both at Special and at General Term. The exception was not taken at Special Term. Of course it could not be taken at General Term. The motion for a new trial at General Term was on the ground that the verdict was excessive; of surprise, that the verdict was against the weight of evidence, and of newly discovered evidence, not matter of error, as your Honor notices, any of them.

Now, in *Dann vs. Kingdom* we have the points here, and the matter was presented to the Court by the plaintiff there at General Term, and judgment of the Court in both, upon reason and authority, and the result of that judgment is as has been stated.

In *Hicks vs. Bradner* (2 Abb. Ct. App. Dec., p. 362,) the plaintiff was not a witness, and was not offered.

In *Petrie vs. Howe* (4 Supreme Ct. Rep.) the objection was not taken, as appears by the case and points.

In *Taylor vs. Jennings*, in the seventh of Robertson, the question of the exclusion of testimony injuriously affecting the *con-jux* of the witness was not involved. The question was whether (in an action to charge his wife with adultery) the plaintiff could refuse to testify as to his own adultery.

Now, my learned friends have said that *Rex vs. Cliviger* has been overruled, and the cases of *Rex vs. All Saints*, and *Rex vs. Bathwick* have been referred to. An examination of these cases will show what we supposed we well understood before, that *Rex vs. Cliviger* in its decision is not overruled, but only is a more comprehensive *dicta* or reason of the Court going beyond the decision here reduced by the subsequent reasoning of these cases. And, as we called your Honor's attention to the matter before, the value of *Rex vs. Cliviger* remains unimpaired for authority in this State, because it is expressly approved by the Court of Appeals in the case in the 9th of New-York, of *Hasbrouck vs. Vandervoort*, and no questions of its authority are presented.

Now, with the statute in its text, and some comments upon that, I shall have concluded my observations. Our learned friends seem to have a notion, at least the learned counsel who first addressed your Honor for the plaintiff seemed to have a notion, from his view of the law of evidence, as existing by statute at the time this statute was passed, that the rules of a general nature for the admission of parties or interested witnesses covered the case of husband and wife, and that this statute was to be considered, or that we considered it, as a sort of disabling statute. I confess I am unable to take any such view of the statute, nor did I understand that my learned friend's argument very well cohered on that subject. The Act as described is an enabling Act, and attention was called by my learned opponent to that: "An Act to enable husband and wife, or either of them, to be as witness for or against the other, or on behalf of any party in certain cases." Now, my proposition is that when this Act was passed, the rule of our State, as evidenced by the decision in *Southwick vs. Southwick*, in 49th New-York, and in the case in the 49th of New-York, was that a husband and wife could not tes-

tify in this case now pending. Does this Act enable either of them to testify here, is the sole question.

"In any trial or inquiry, in any suit, action, or proceeding, in any court, or before any person having by law or consent of parties, authority to examine witnesses or hear evidence, the husband or wife of party thereto, or of any person in whose behalf any such suit, action or proceeding is brought, prosecuted, opposed or defended, shall, except as hereinafter stated, be competent and compellable to give evidence the same as any other witness, on behalf of any party to such suit, action or proceeding."

Now, that would not admit either Mr. or Mrs. Tilton in this action. What were the exceptions? First of all, an exception limiting the privilege or the extent of testimony that could by compulsion be drawn. It was applicable to all cases in which a husband was a witness. That limitation was, "No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage."

Now, your Honor will notice that any qualification in regard to the range of evidence that could be obtained from them was a qualification that might be tolerated in the ordinary course of litigation in which they might be invoked as witnesses. It was a very difficult—a very perilous rule, it seems to me, in two particulars. In the first place, it did not limit in the least the voluntary volume of testimony that a husband or a wife could give; and to have a witness whose mouth is opened to volunteer statements, and then is closed by the law to compulsory searches for truth from the other side, is a very dangerous condition of the law of evidence, difficult for lawyers, difficult for courts, difficult for juries to determine the truth. If a witness comes upon the stand with the law not dominant over his will, but his will dominant over the law, I would like to know who would wish to be responsible for the trial of causes or their determination. But there is another very perilous and very difficult limitation, and that is the determination as a rule of demarkation between what is lawful and what is excluded, the exclusion being defined as "any confidential communication made by one to the other during their marriage." Now, I do not adduce these qualifications for the purpose of criticism or fault-finding with legislation, but simply to adduce them as necessary qualifications in the opinion of the Legislature, notwithstanding all defects of the prior administration of the limitations upon the introduction of husband and wife known in ordinary litigations. Well might the Legislature stand appalled at the notion of opening the mouth of husband or wife on a question of adultery of the other, and seek to have justice done consistently with limitations that it should be only when they volunteered, and never to compel them; that it should be limited only to what did not take place in the confidence of marriage, and leave out everything that did, and thus expose the defendant in a suit like this to a volunteer plaintiff to open his mouth concerning the relations, so far as he pleased, and close it against the probing of the testimony by the opposite side, and to indulge in evidence that bore against the defendant from his, the plaintiff's, the husband's, particular opportunities to know of his wife's actions; and



then when the defendant, by his counsel, undertook to press him about the other things he knew in his wife's action and conduct that would exclude and defend the defense against his charge, that on his mere will he could say: "Oh, that is the province of what I learned by the confidential communications of marriage."

Now the Legislature, impressed with the difficulty of invading the rule of the common law under which we have prospered so long, yielded to the liberalization, but yet restricted it. It said, as the English law had said, with regard to any judicial action that arises in consequence of adultery, this enabling act has no effect, for we can put no limitations that will not do injustice, and we can see no expediency that will justify the admission at all. Consequently the exceptions that are stated in the first section, in its enabling clause, and taken out of its operation, includes what I now read:

"Nothing herein contained shall render any husband or wife competent or compellable to give evidence for or against the other in any criminal action or proceeding, except to prove the fact of marriage in case of bigamy, or in any action or proceeding instituted in consequence of adultery, or in any action or proceeding for divorce on account of adultery, or in any action for or on account of criminal conversation."

The genius and the policy of the British limitation was followed strictly here. If as a citizen, if as a member of society, I look with horror at this invasion of the privacy of marriage, and have sought to enforce these considerations upon your Honor, I confess as a lawyer, owing a duty to the administration of justice, both to the learned Court and the jury, who hear all that we say and do, I feel entire incompetency to deal with a witness introduced into the trial of this cause, if I must examine him *in vinculis*, and he can close his mouth whenever I seek to compel his testimony. I look with dismay upon the sad disfigured fragments of evidence that the search after truth are to be displayed before this jury if this will of the husband is master over me, and not the law master over him. I look with dismay also upon the other current of separation, which is to withhold from me and from my client's cause the defense of penetration into the conjugal relations, that he can close under this law, as having been gained by confidential communications between himself and his wife.

Now, if the Court please, something has been said about the admission of the defendant and the exclusion of the plaintiff. I do not in the least qualify, nor did the law ever undertake to qualify, while its rules were as I have read them, and when its rules are still the same as I have proposed to your Honor, that in a certain sense it was a subordination of the full scope of the administration of justice, but only because it was to maintain the institution on which society itself rested. Who shall say that it is profane to swear by the gift on the altar, but not by the altar that consecrates the gift. All the efforts of law and of civil society are to maintain, invigorate, preserve, purify, exalt the structure that, as a perpetual habitation for liberty and justice, has been furnished by the wisdom and courage of our ancestors. [Applause.]

Mr. Beach—I did intend, Sir, to ask from the Court permission to notice the new authorities which have been presented

by my learned friend, but the hour of adjournment is so near that I waive the privilege, and we submit the question.

#### A DECISION TO BE GIVEN MONDAY.

Judge Neilson—I can only say to the learned counsel, whose arguments have been of very great interest to the Court, that I will endeavor to give the subject, regarding it of grave importance, all possible consideration; not to write an opinion, however, which I do not conceive to be part of the office of a Judge presiding at *Nisi Prius*, and would savor somewhat of pedantry; therefore the learned counsel will expect nothing more than a statement of my conclusion, when we meet; and that I will endeavor to give frankly, so that either side can take advantage of any error I may commit.

Mr. Evarts—There is a single consideration I wish to state, in answer to some observations of your Honor. A considerable argument was made to reduce the authority of the case of *Dann vs. Kingdom*, on the ground that it was a decision made without due consideration. But your Honor will notice that Justice Talcott and Justice Mullen and Justice Smith concurred with the Justice who presided at the trial, making up the four of that department; and this authority is well understood in this State. But a proposition is made that, because your Honor's Court is not in the line of appeal to the Supreme Court, but stands upon equal footing of direct appeal to the Court of Appeals, this decision is not binding upon your Honor; and your Honor gave us to understand the general doctrines and feeling of the Court in that regard. Our proposition is this, if your Honor please, that, to a Judge at *Nisi Prius*, the decision of the General Term of the Supreme Court is binding as an authority, just as much in the courts of the Superior Court and Common Pleas of New-York, and the Buffalo Court, and your Honor's Court, which stand upon the same constitutional footing and have the same direct appeal. The Supreme Court has, by the Constitution, general jurisdiction of all cases of law and equity. It is the general court of law and equity of the whole State; and it is that court which preserves the unity of the law in its preliminary state; and, so far has the respect for the decision of a General Term of the Supreme Court been carried by the Legislature, that the decision of the General Term of the Supreme Court of the State—any General Term—protects all parties acting and relying upon it, although by subsequent appeal, the Act of the Legislature upon which such proceedings were supposed to be predicated, should be declared finally unconstitutional. Now, we submit to your Honor, that it is extremely inconvenient, if it should be held that, while this decision of the General Term that I have adduced, binds the Supreme Courts of this district, binds them (your Honor's friends and judicial associates) in all *Nisi Prius* proceedings in their Courts, it is less binding upon one of your Honors sitting at *Nisi Prius* in this Court. For then you have the most unseemly antagonism of competition, that the same population, governed by the same laws, governed

by the same judicial fabric in general, have a preference and choice between the Supreme Court and your Honor's Court at *Nisi Prius* as to the prevalence of one or the other rule of law in the first instance for a trial.

#### JUDGE NEILSON INDUSTRIOUS.

Judge Neilson—I wish to ask the counsel, most of whom have occasion to come from New-York, whether they are not willing to work to-morrow. I think to-morrow is Saturday.

Mr. Fullerton—It is in New-York; I don't know how it is here. [Laughter.]

Mr. Evarts—I have no hesitation in saying that I should not like to surrender my Saturdays to this case.

Judge Neilson—Then I wish to make this inquiry, whether it will be agreeable to the counsel if we should meet next week not at 11, but at 10:30 in the morning, and adjourn not at 4, but at 4:30, which will give us an hour more each day, and more than an additional day in the course of the week. I wish to know if counsel cannot be constrained to consent to that. I do not wish to be unreasonable, but I put it to you.

Mr. Evarts—If your Honor please, it is proper that we should say (and I know my learned friends will concur) that a case of so much magnitude and importance, and of so wide a range of consideration pressing upon counsel in respect of evidence, and the production of it, has, in my judgment, never been brought to a trial, in the experience of our profession, so soon after it was at issue, as this, that has thrown upon counsel, I doubt not, on both sides (probably less upon the plaintiff's side than upon ours, because they were masters of the situation, and could choose when to bring it on more than we)—has placed a very great and necessary labor upon us, and we have only the fragments of the day to consume in that way. We think that we save more time in Court, by having those portions of the day out of Court, than if we were in attendance here.

Mr. Beach—I agree entirely with the views of my learned friend.

Judge Neilson—I wish to ask Mr. Evarts, in relation to the question before us, before we adjourn: Suppose a husband indicted and on trial for an assault upon his wife, with intent to kill, or an assault upon one of their children with intent to kill, or for the crime of bigamy, can a husband, or not, under the Act of 1869, present himself as a witness, and be heard as a witness, irrespective of any limitation affecting the marriage relation, irrespective of the question how it shall smite the wife, or how affect her? And does that illustrate in any degree any tendency on the part of the Legislature to make free inroads upon that which had, long time before, been the settled rule of law?

Mr. Evarts—The terms of the statute should, wisely, be before us, if your Honor please. But we understand that that is a statute in its whole purpose, directed to placing defendants in criminal proceedings in a position to be witnesses if they chose and not compellable, and that it is declared by the Act itself to be subject to all possible limitations that would apply to other witnesses.

Judge Neilson—And no more.

Mr. Evarts—No more. I do not mean to all witnesses, but to any kind of witnesses.

Judge Neilson—All competent witnesses.

Mr. Evarts—All witnesses that stood in the predicament toward the evidence that they did. But whether that would aid us much on this point I do not see.

Mr. Fullerton—May I ask your Honor when the decision of this point which has just been argued will be announced?

Judge Neilson—At our meeting on Monday morning.

Mr. Shearman here handed up a printed copy of points to the Court, at the same time handing a copy to the counsel for the plaintiff.

Mr. Beach—I do not think it is proper to hand up a printed copy of an argument on the other side.

Mr. Shearman—I have given you a copy.

Mr. Beach—You have just handed one to me. A pretty time! Giving me no time to answer.

Judge Neilson—I do not need it. [The Judge refused to take the printed copy.] I was about to say in separating, not to meet again until Monday morning, that I would remind the jury not to read the newspapers. This intimation will be more acceptable from the observations which have fallen from counsel as to the comments of the newspapers and to the spirit in which some editors are disposed to refer to the case and to the parties in it, and to possibly discuss the questions. I said this morning that I was making the last appeal that I should make to the editors of the newspapers, and I should not occupy the time of the Court by reference voluntarily to that matter. I also mentioned that I had received letters from intelligent gentlemen abroad, complaining of some newspapers and calling my attention to the remarks of other editors in regard to what had been published. All this will admonish you more than my mere words can, to refrain from reading the papers. As I said, this is a solemn duty on your part and you must feel the weight of it, and I have no doubt you will carry out the suggestions made by the Court entirely, and with the best intention. We will now adjourn until 11 o'clock on Monday morning. The Court was then adjourned.

## SIXTEENTH DAY'S PROCEEDINGS.

### TILTON'S EVIDENCE TAKEN.

HE TELLS THE STORY OF HIS EARLY CAREER—HIS FINANCIAL CONDITION IN 1871—THE LETTER OF CONFESSION EXCLUDED.

At the opening of the Court in Brooklyn, on Monday, in the case of Mr. Tilton against Mr. Beecher, Judge Neilson decided that the plaintiff was a competent witness, but that he could not testify to confidential communications. Mr. Tilton was then sworn and was examined during the remainder of the day. The principal points reached were concerning the memorable interviews between Mr. Tilton



and Mr. Beecher on Dec. 30, 1870, and the subsequent meetings. The contents of the letter of confession offered from memory by the witness were ruled out. Mr. Tilton swore that instead of being a bankrupt in 1871 he owned property valued at \$30,000.

The silence of the court-room was first broken on Monday morning by the deep voice of Judge Neilson announcing his decision that Mr. Tilton was (1) competent to testify in his own behalf, but (2) that he was not competent to testify to any confidential communications touching the principal question in issue.

Mr. Tilton ascended the stand. He stood with his back to the audience and took the oath, and then sat down. But before any questions were asked, Mr. Beach said that he had not taken an exception, because he supposed that the Judge meant by confidential communication the legal technical definition of that term. Judge Neilson suggested in a dry way that the counsel might better take an exception. Mr. Evarts then explained his view of the decision, ending by taking an exception to the ruling of the Judge. Mr. Beach, however, took none, and without further interruption the examination of the awaiting witness proceeded. In giving the names of his children the witness prefixed with emphasis and studied care the word "our," *e. g.*, "our daughter Florence," "our son," etc. For the first time the details of Mr. Tilton's financial condition were made known, and according to the witness his property in the early days of 1871 was worth altogether about \$30,000, his income consisting of interest on \$1,000 or more in banks, \$5,000 from lectures, \$1,000 or \$2,000 from his books, and \$6,000 in the hands of Mr. Moulton. The meeting at Mr. Moulton's house between the witness and Mr. Beecher on Dec. 30, 1870, was fully described, every detail being narrated with precision from the time when, as the witness stated, he entered the room and locked the door, putting the key into his pocket, until Mr. Beecher left the house. The alleged verbal confession of Mrs. Tilton to her husband was repeated with painful exactness, there being no attempt to gloss over the literal language used.

A sharp debate followed the request of Mr. Fullerton that the witness repeat the contents of Mrs. Tilton's letter of confession, produced at that interview and there destroyed. Mr. Evarts opened the discussion and Mr. Beach responded. Clerks were sent out for authorities and returned with armfuls of law books. It seemed for a few moments that a long and severe struggle was about to begin, but Judge

Neilson abruptly closed it by asking that Mr. Fullerton go on temporarily, without touching the contents of the letter. Mr. Tilton's theory of his wife's asserted love for Mr. Beecher was repeated, and his former policy of excusing her action was strictly adhered to. Mr. Bowen's name was frequently mentioned in the testimony, his alleged accusations against Mr. Beecher being repeated so far as they were considered pertinent to this case.

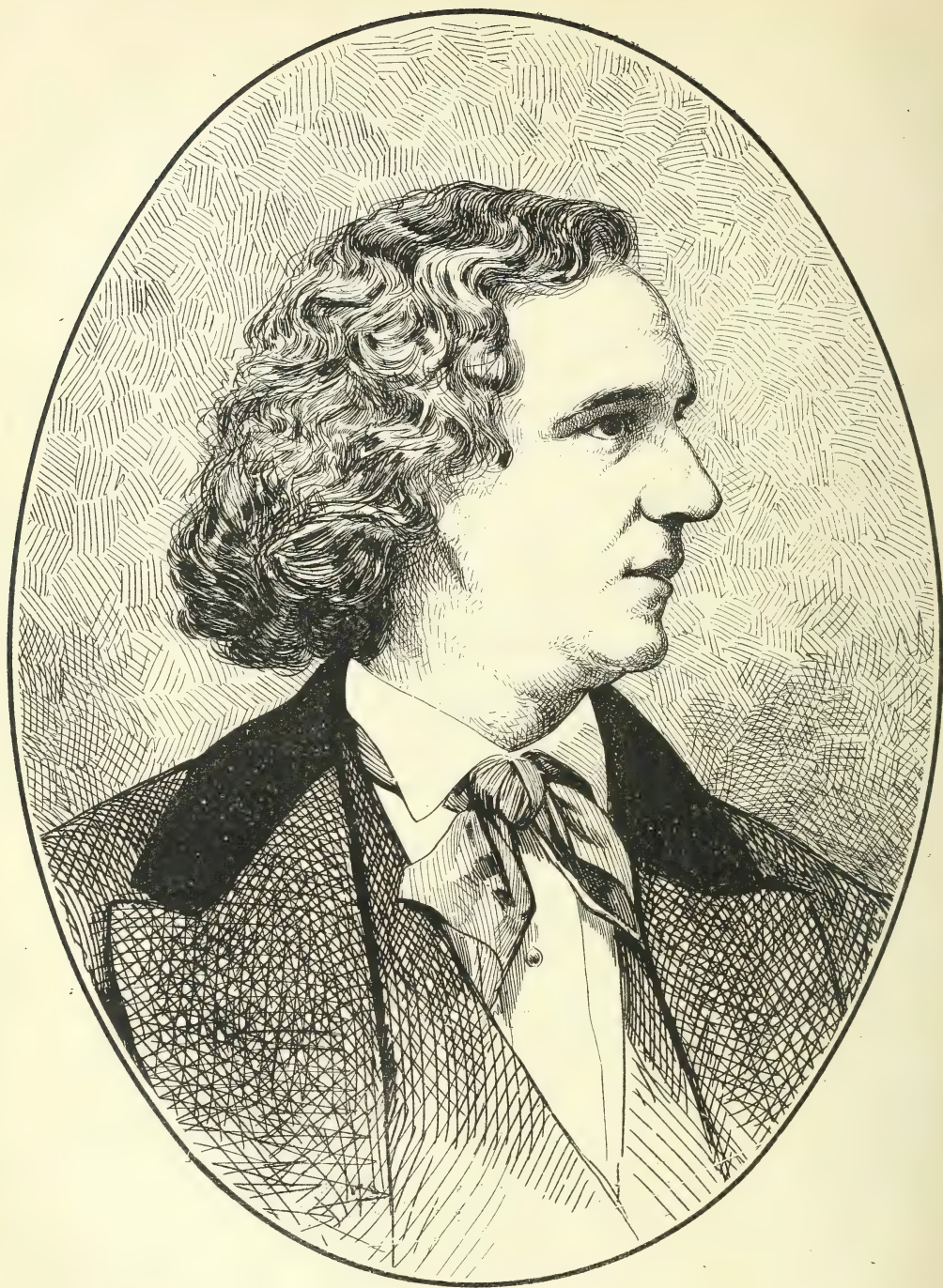
After recess, Judge Neilson ruled out the letter of confession, hesitating when Mr. Beach brought further arguments to bear, but adhering to his decision after hearing both sides. The Court adjourned at 5 minutes before 4 o'clock.

#### THE WITNESS AND HIS HEARERS.

As Mr. Tilton ascended the witness stand and swore to tell the truth and nothing but the truth, every eye in the court-room watched his actions and his face with sharp curiosity. The people in the audience leaned eagerly forward and awaited almost breathlessly the first words to fall from his lips. Mr. Tilton did not seem to be at perfect ease at first, but in the hands of Mr. Fullerton he soon gained entire composure. During the examination he sat perfectly upright in his chair, his coat buttoned tightly about him, and while his demeanor in court has always been dignified it now seemed severe, and the little color he usually has in his face had entirely deserted it. He gave his testimony thoughtfully, choosing his words with great care, and speaking with almost aggravating deliberation. His replies almost always incorporated the question, so that without the queries his answers would make a continuous story. He seldom said "Yes" or "No," and his answers sometimes were long even to wearisomeness. Occasionally he would wander beyond the legal limits prescribed, and it was necessary to check him. During Mr. Tilton's examination on Monday he seemed to see no one except the person questioning him. His eyes never wandered toward his wife, and if he saw her at all it was simply in a sweeping glance. He looked first at the ceiling and then at the floor, meeting no one's gaze except that of Mr. Fullerton, whom he looked at steadfastly whenever he was speaking. Mr. Beecher's face was a study. During the entire narration of his accuser he looked at him unflinchingly, taking notes occasionally, but listening to every word with close attention. When Mr. Tilton described Mr. Beecher's agitation on various occasions, the latter smiled broadly, and laughingly







whispered to his wife. He did not once change color, and there was never the slightest sign of agitation in his manner. Mrs. Beecher's face wore an amused expression nearly all day, and several times, as the witness told of matters which she seemed to consider absurd, she laughed and looked trustfully up into her husband's face. It was many minutes before Mrs. Tilton turned her eyes toward her husband. She was veiled, and while the first few questions and answers were given she sat with downcast eyes. After a time she ventured to glance toward Mr. Tilton and afterward watched him closely, not wavering even when he was giving the worst testimony against herself and her former pastor.

### THE PROCEEDINGS—VERBATIM.

#### TILTON DECLARED A COMPETENT WITNESS.

Judge Neilson—In determining the question raised by this objection, the Court holds:

I. That the plaintiff is competent to be sworn and to testify in his own behalf.

II. That touching the principal question in issue, he is not competent to testify to any confidential communications.

It is considered that this qualified direction respects the present state of our law of evidence, as the same has received legislative and judicial expression, and also respects what may remain of the rule which imposes silence or restraint by reason of the marital relation, and on grounds of public interest or policy.

#### SCOPE OF JUDGE NEILSON'S DECISION.

Mr. Evarts—Your Honor will note our exception to Mr. Tilton being sworn in the case.

Judge Neilson—Yes, Sir.

Theodore Tilton, the plaintiff, called and sworn on his own behalf.

Mr. Beach—In regard to your second ruling, on the part of the plaintiff, Sir, perhaps we ought to say that we understand that second proposition of the Court to rule the general principle, which we have not disputed, that husband or wife as a witness is incompetent to speak of what are technically called confidential relations between them. We take no exception, Sir, to that ruling, but I suppose it is understood that under that decision the question what shall constitute such a communication as arising from the confidence and faith of the conjugal relation, is an open question to be decided upon the particular circumstances of any such communication when it shall be presented to your Honor. If the decision is intended to be enlarged beyond that scope and meaning, why, we certainly should take an exception to it, but I do not so understand it.

Judge Neilson—The exception better be entered, Sir.

Mr. Evarts—We understand your Honor's ruling as on this head covering what we regard as the rule of law under that consideration, even where the law permits a married person to be sworn, and that it covers everything that grows out either in the way of oral communication or of personal observation between husband and wife, that arises during the confidence of their marriage. On another point discussed by counsel, that is, whether a husband or a wife can be heard to speak against the other upon a charge of adultery, your Honor has not determinately ruled, and probably some questions may come up that counsel will present to your attention for ruling as the inquiry proceeds.

Mr. Beach—Your Honor will remember that upon the part of the plaintiff, there was no discussion whatever as to the character of confidential relations. What constitutes such a communication between husband and wife as to fall under that rule of exclusion was not at all discussed. We did not suppose it raised by the objection, which was one simply to the competency of the witness, and not to his capacity to speak as to particular subjects which may have transpired during the existence of the marriage relation, and we suppose that the admissibility of that class of evidence would be presented, if objection was taken in the course of the examination of Mr. Tilton, and that your Honor would then listen to such authorities and discussion as might be appropriate, and rule as you should understand the proof or evidence to be.

Judge Neilson—Still, I think the line of demarkation would be very simple. The counsel can easily observe it. It may be that I shall have occasion to hear you both perhaps on that matter.

Mr. Beach—I think, your Honor, that there are some authorities upon that subject which it may, perhaps, be proper to submit to you in a few days.

Judge Neilson—If there is occasion, I should be happy to hear you, Sir.

### TESTIMONY OF THEODORE TILTON.

Mr. Fullerton—You are the plaintiff in this action. I believe, Mr. Tilton? A. Yes, Sir.

Q. What is your age? A. About 39.

Q. Where were you born? A. In the City of New-York.

Q. How long have you resided in the City of Brooklyn? A. I think about between 20 and 25 years; I cannot fix the exact point.

Q. Where were you educated? A. In the City of New-York.

Q. When were you married? A. On the 2d of October, 1855.

Q. And by Mr. Beecher, I believe, as has already been proved? A. Yes, Sir.

Q. What is the age of your wife? A. She is about 41.

Q. Older than yourself, then? A. She is between one and two years older; I don't know exactly how many months.

Q. How many children have you living? A. Four.

Q. Please state their names and ages. A. The oldest is our daughter Florence, who is about 18 years old; the next our daughter Alice, who is now about 16; the next our son Harold, who is about 12; and the youngest our son Ralph, who is about 6.



Q. Have you lost any children? A. Two.

Q. What were their respective ages at the time of their death?  
A. They both died in infancy.

Q. State when they died? A. I don't think at this moment I can give the date of their death.

Q. What has been your occupation since your majority? A. A literary profession.

Q. And connected with what, if you please? A. My earliest literary employment was in connection with *The New-York Churchman*; then in connection with *The New-York Observer*; then in connection with *The New-York Independent*; then in connection with *The Brooklyn Union*; and, finally, in connection with *The Golden Age*.

Q. When did you become connected with *The Independent*?  
A. I think it was in the Spring of 1856.

Q. Who was the editor or editors of that paper at that time?  
A. The editors were three clergymen: Rev. Dr. Joseph P. Thompson, D.D., Rev. Leonard Bacon, D.D., and Rev. Dr. Storrs, of Brooklyn.

Q. When did they cease to edit that paper, and who succeeded them? A. I do not remember the year at which they terminated their engagement; they were succeeded by Rev. Henry Ward Beecher.

Q. And at what particular time did your connection with that paper commence? A. Mine commenced, as I have already answered, I think, in the Spring of 1856. I was on *The Independent* under its original three editors, in a subordinate capacity. I remained on *The Independent* in a somewhat advanced position under Mr. Beecher; and I afterward, on the occasion of Mr. Beecher's retirement from the editorial chair, became his successor, as the editor of *The Independent*.

Q. At what time did Mr. Beecher become editor of that paper, as near as you can recollect? A. I do not remember the year.

Mr. Beach—Well, about?

Mr. Fullerton—As near as you can get at it? A. Well, I should have to guess if I answered; I think somewhere about 1860 or 1861; perhaps a little later.

Q. How long did he remain editor of the paper? A. He terminated his editorship after his return from England; I believe that was in 1863 or 1864.

Q. And what was the character of the relations existing between you and him during his editorship of that paper? A. Do you mean our official relations or our personal?

Q. Both. A. My official relation to Mr. Beecher during his editorship of *The Independent* was that of his associate—I was not technically called the managing editor; but I presume that designation is as accurate a one as I could give; I held under Mr. Beecher what has since been generally regarded as the office of managing editor, though I believe at that time that term was not in use.

Q. Socially, what were your relations? A. Mr. Beecher and I were very intimate.

Q. And up to what time did that intimacy continue? A. Until the Spring of 1870.

Q. During the period that you have spoken of, did you become connected with Plymouth Church in any way? A. I have

been connected with Plymouth Church, in one way or another, ever since my boyhood.

Q. State, if you please, in what way? A. I at first became connected with the Sunday-School; I was a scholar in the school; I was a teacher in the school; I was the Librarian of the school; I was the Associate Superintendent of the school; I finally became the Acting Superintendent of the school. Then, in 1853, I became a member of the church, though the offices which I held in relation to the Sunday-School were, some of them, before 1853, and many of them continued after that date.

Q. Who officiated at the ceremony of your introduction to the church? A. The pastor and all the congregation.

Q. The pastor, Mr. Beecher, at that time? A. Yes, Sir.

Q. During all the time that you have spoken of, I believe, he was pastor of the church? A. Yes, Sir.

Q. Was your wife connected with the church? A. My wife became a member of Plymouth Church, I think, two years before I joined; I think her membership dates from 1851.

Q. Did she remain connected with the church, as a member, up to 1871? A. I think her name is still on the roll of membership; I will not be positive, however, as to that last answer.

Q. During Mr. Beecher's absence in Europe, of which you have spoken, state whether there was a correspondence kept up between you? A. Yes, Sir; I don't remember how often I wrote to Mr. Beecher; I wrote to him on several occasions, giving him the progress of affairs at home, and I received some letters from him at that period, one of which, a long and striking letter, was afterward published by Mrs. Stowe in her biography of him.

Q. Now, how long have you been acquainted with Francis D. Moulton? A. Ever since my school-days.

Q. State, as near as you can, when that acquaintance commenced? A. I should think as far back as 1848 or '49 or '50; somewhere there.

Q. And has it continued up to the present time? A. Yes, Sir.

Q. How long has Mr. Moulton resided in Brooklyn? A. I think about ten or a dozen years; perhaps not quite so long.

Q. Were you in school together? A. Yes, Sir.

Q. Where? A. At the institution which was then called the Free Academy, and which is now known as the College of the City of New-York.

Q. Have you been intimate friends during all that period of time? A. We were very intimate during our college days. When those days were over Mr. Moulton continued to reside in New-York; I came to Brooklyn; I did not then see him very often. At length he came to reside in Brooklyn in my own neighborhood, and then our early intimacy was renewed and has continued to this hour.

#### TILTON'S FINANCIAL INTERESTS.

Q. I want to ask you in relation to your property. In the month of December, 1870, what property were you the owner of? A. At what date?

Q. In December, 1870. A. Well, Sir, I shall have to speak—

Q. At the commencement of 1871. I don't want an exact ac-

count, but give me an approximate estimate of the property, and what it consisted of? A. I owned a house, in which I lived, No. 174 Livingston-st., which, with its library, furniture and pictures, I suppose was valued at about \$25,000. I owned a piece of property in Llewellyn Park, New-Jersey, valued at about \$10,000. I owned a share of THE NEW-YORK TRIBUNE, valued, I think, at that time, a little more than \$10,000. I owned a small farm out West—

Q. What State, please? A. In Iowa; valued at about \$1,500. I owned a piece of land, a little fragment of it, near Prospect Park, in this city, valued at about a thousand dollars. I had also some money at interest at that time, four or five thousand dollars. Those are all the items that occur to me at this moment.

Q. If there were any liens upon this property you will please state them? A. There were none except in two instances; there was a mortgage on my house, I think the amount was \$7,500. There was a mortgage on another piece of property, or rather not a mortgage, but I had assigned it by a power of attorney to my father, valued about \$10,000. With that exception every thing else was free and clear. I suppose I had at that time—you wish me to give you the sum total?

Q. The sum total, if you please? A. I suppose that on the occasion of my retirement from *The Independent* and *The Brooklyn Union*, which is the date at which you inquire?

Q. Yes? A. My property free and clear of all incumbrance would have amounted to about \$30,000, perhaps \$35,000.

Q. Now, after the 1st of January, 1871, were you in the receipt of any income, and if so, what income? A. Well, Sir, I cannot say that I was in the receipt of a steady income, but I was in the receipt of—yes, I was also—in the first place I had money at interest, about \$4,000 or \$5,000, which yielded me some income.

Q. Where was that? A. That was deposited with the firm of Woodruff & Robinson. I received also—

Q. Go on. A. If I understand your question, it is what sums of money I have received since?

Q. What sources of income had you after the 1st of January, 1871? A. Well, about \$4,000 deposited with the firm of Woodruff & Robinson; about \$1,000 I should say in round numbers, not able to be more accurate, in one or two of the banks in this city; \$7,000 which I received under my contracts with Mr. Bowen; \$5,000 in round numbers as the result of my lecturing season in the Winter of 1871-2; between \$1,000 and \$2,000 on my books from my publishers; \$6,000 subscribed, as Mr. Woodruff has explained, as a capital for *The Golden Age*; in addition to that, about \$6,000 in all from Mr. Moulton.

Q. Now, Sir, did you have any other incomes beyond what you have stated? A. No, Sir. I beg your pardon, Mr. Fullerton; did I mention my lectures? Yes, I did.

Q. You mentioned your lectures. Was there any income from *The Golden Age* at all? A. Yes, Sir; there was a large income from *The Golden Age*, but there was also a large outgo; there was no profit.

Q. Was there any net income? A. During that period?

Q. Yes. A. Oh! yes; I should think about \$40,000.

Q. Net income over and above the expenses? A. Oh! no, Sir; I think not; very slight at all events.

Q. What debts did you owe at that time, if any? A. At what time, Sir?

Q. After January, 1871, over and above the liens upon that property of which you have spoken? A. Oh! I had no debts, Sir, other than the current household expenses; I don't think I ever was in debt over \$1,000 at any one time.

Q. As to *The Golden Age*—state whether that was largely indebted, or otherwise? A. *The Golden Age* at the time of its commencement, as Mr. Woodruff has explained, owed \$6,000 to the gentlemen who contributed it. They afterward returned me their notes, making that money a free gift. That canceled that debt. The only other debts which *The Golden Age* ever had were debts for current expenses, and I don't think that at any time they ever ran above \$500, or \$700, or \$1,000.

Q. Not beyond that at any time? A. I don't recall any instance at present at which the debts of *The Golden Age* were over \$1,000.

Q. You have spoken of \$6,000 or thereabouts received from Mr. Moulton? A. Yes, Sir.

Q. Did you know the source of that money? A. I did not, Sir.

Q. Did you know that any part of it came directly or indirectly from Mr. Beecher. A. No, Sir; not a cent.

Q. When did you first learn it? A. When Mr. Moulton wrote the fact in his second statement, I think.

Q. In 1874? A. Yes, Sir.

Q. And you didn't know it until that time? A. Never until then.

Q. Now, Mr. Tilton, I want to call your attention to the month of December, 1870, the 30th day of that month, and ask you whether on that day you had an interview with Henry Ward Beecher? A. I had an interview with Henry Ward Beecher on the evening of that day.

Q. On the evening of the 30th of December, 1870? A. Yes, Sir.

Q. Where did the interview take place? A. It took place in the second floor, front room, of Mr. Moulton's house at his then residence, No. 143 Clinton-st., Brooklyn.

Q. What length of time did the interview occupy? A. I should think three-quarters of an hour, possibly an hour.

Q. Who were present at that interview? A. Mr. Beecher and I.

Q. No one else? A. Mr. Moulton at the first moment of it, but he instantly retired.

Q. Will you now state what occurred at that interview?

#### FIRST ARGUMENT OVER TILTON'S TESTIMONY.

Mr. Evarts—Now, if your Honor please, I think it is proper that we should suggest to your Honor, and if you agree with us you may instruct the witness, that he is not at liberty to repeat in the testimony here anything that he said there that was derived by a confidential communication from his wife.

Mr. Fullerton—We suppose that your Honor will give the witness no such instructions as that, because it would not be in harmony with the decision that your Honor has just announced touching this very subject. I suppose I am at liberty to prove by this witness all that occurred between himself and Henry



Ward Beecher on the date embodied in the question—what he said to Mr. Beecher and what Mr. Beecher said in reply to him. It makes no difference where the witness learned the facts that he communicated to Mr. Beecher. Even if he learned them from his wife and communicated them to Mr. Beecher, we have a right to that evidence in this case. I suppose the objection is premature, Sir, or the request rather premature, because it would be better to wait until the particular question arises.

Mr. Evarts—The difficulty is that the question, which was proper enough in general, was a general question to draw out an entire interview, and under the ordinary rules of evidence it would be admissible, because it occurred with Mr. Beecher, and therefore I must intercept the illegal evidence at this stage, or run the risk of its being introduced. Now, the authorities seem to be very clear. In the case of *Dawson vs. Hall* (2 Mich. Supreme Ct., 390)—held, that it is a well settled rule that the declarations of husband and wife are subject to the same rule of exclusion which governs their testimony as witnesses. *Greenleaf's Evidence* (394, section 341) is to the same effect. In the case of *Gardner vs. Klutts* (8 Jones L.—N. C. 375, Supreme Court) it was held that as a wife is not a competent witness for or against her husband, it follows that her declarations cannot be evidence for or against him. Otherwise, in the language of the Court, "more weight is given to what she says when not under oath than to what she would say on oath, which is absurd." It is held that this applies to written as well as to verbal declarations. The fact that a wife cannot be examined as a witness by reason of her husband's being a party is not a reason for admitting evidence of her declarations. Now, your Honor will perceive that it is quite impossible to adhere to the proposition that the husband or wife cannot give evidence against the other upon the ground of public policy, and no protection of the marriage relation, when the point of evidence sought to be decided arises in the confidence of marriage. If that rule is to be transcended and trampled upon by the mere introduction of a communication, of that confidential communication made by the husband or the wife to a third person, and then in the shape of an introduction of the evidence between the husband and the wife and the third person, the confidence of marriage is violated. When I say "third person," I mean a person not one of the married pair. I don't mean a third person in respect to the controversy, but a third person in reference to the marriage. Now, when husband and wife violate the confidence of a communication made to them in that relation by communicating it to another person, that communication may be provable, but it cannot be provable by the husband or wife; that must make a part of that proof, the divulging of the confidential communication.

Judge Neilson—Within the ruling I intend to make, I should not receive any evidence of any statement or communication by the plaintiff's wife. This question, however, is very different. The question is, whether in a conversation (assuming there may have been some communication)—whether in a conversation between the parties, the conversation may not be given in evidence, although it may, in a sense, involve what may have been

learned in that form of confidential communication? That rule will be transgressed from, if, in the conversation given between the parties, the party was allowed to state that his wife had given that information. I could not permit that, of course.

Mr. Beach—I hope your Honor will not rule that way without hearing authorities. Your Honor is anticipating a question which we have avoided discussion upon hitherto.

Judge Neilson—You may not quite understand me. I am strongly impressed with the belief that any conversation between the parties to this action may be given, but if that conversation reveals in any degree any communication received from the wife, although as part of the conversation with the defendant he is at liberty to give it, he would not be at liberty to go yet further back and state that the wife actually gave him that confidence as narrated in that conversation, whatever it might be.

Mr. Beach—That leaves the main question open for discussion, and I will not trouble your Honor with any remarks upon it unless it becomes necessary to do so. But I hope your Honor will hold your mind open to the discussion of the question of what constituted a confidential communication between husband and wife of which neither can speak, and what circumstances modify that communication, so that he may disclose it, and what is the state of our statutory law at this day upon that subject.

Mr. Evarts—Your Honor will be good enough to note my exception to any evidence on this subject. The question is a proper enough question in its form. My objection, however, in advance of testimony is to any evidence on the part of this witness in answer to this general question that may contain a statement of any confidential communication from his wife, although it may have been communicated to Mr. Beecher.

Judge Neilson—Yes, I will note your exception.

Mr. Evarts—I want to raise that point of law, and I will take an exception if your Honor has decided not to exclude the testimony.

Mr. Fullerton—I think the question will not arise in the examination of this witness at all.

#### THE FIRST HOSTILE MEETING AT MOULTON'S.

Mr. Fullerton—Now, go on and state what occurred between yourself and Henry Ward Beecher on the evening of the 31st December, 1870, at Mr. Moulton's house? A. Mr. Moulton brought Mr. Beecher to the door, bowed to me and said, "I have brought Mr. Beecher at your request." Mr. Moulton then retired, closing the door behind him. I did not salute Mr. Beecher nor he me. He crossed the room and took an easy chair by the window. I crossed the room in the other direction, went to the door, locked it, took out the key and put it in my pocket. I then re-crossed the room, and sat in a chair opposite to Mr. Beecher. The conversation that took place I cannot undertake to repeat accurately, that is to say, I will not attempt to give the words, except at certain points, because what was said was mostly said by me, and I have no special gift at recalling words. I can better call what he said than what I said. I began, as I remember, somewhat in this way—I think I am entirely accurate as to the first

words spoken and they were these. I said: "I presume, Sir, that you received from me a few days ago, through Mr. Bowen, a letter demanding your retirement from your pulpit and from the City of Brooklyn." He said: "I did." I then said to him: "I have called you here to-night in order to say to you that you may consider that letter unwritten—unsent—blotted out—no longer in existence." He then said to me, bowing his head: "I thank you." I replied to that: "Your thanks should not go to me, but to Elizabeth. It is in her behalf that I hold this interview, and whatever I shall say here or in consequence of this meeting is not for your sake, nor for my sake, but for her sake." I then asked him whether Mr. Moulton had shown to him a statement which Elizabeth had written—

Mr. Evarts—Now, if your Honor please, I interpose an objection, that on the witness's own statement, this was an interview held in the confidence of the wife and in her behalf, and he cannot avoid it.

Judge Neilson—Take an exception.

The Witness—He said to me that Mr. Moulton had shown him no statement. I then said: "Do you not then understand the object of this interview?" "I do," said he, "in general terms." I then replied: "You should understand it more specifically. I will read to you a statement which Elizabeth has made. Mr. Moulton has the original; I have a copy; I will read to you the copy." I then put my hand into my pocket, took out some papers, and while searching for the copy which I had made of Mrs. Tilton's paper, he said to me: "Before reading that, Theodore, I wish you would tell me what Mr. Bowen has been saying against me." I replied to him that I had not summoned him to the interview for the purpose of discussing with him Mr. Bowen's affairs, but that he should go to Mr. Bowen himself. Nevertheless, as he asked me the question, I would say that Mr. Bowen, in an interview with me on the preceding day, had made a statement that: "You have been guilty of adulteries with numerous members of your congregation ever since your Indianapolis pastorate, all down through these 25 years; that you are not a safe man to dwell in a Christian community; that he knows numerous cases where you have shipwrecked the happiness of Christian homes; that he is determined you shall no longer edit *The Christian Union*; that you shall no longer speak in Plymouth Church, and he says distinctly that you are a wolf in the fold and that you should be extirpated." Mr. Beecher said it was a matter of amazement to him that Mr. Bowen should have so spoken: "For," he said, "when Mr. Bowen delivered to me your letter demanding my retirement from the pulpit he appeared to be friendly, and he offered me his friendly services in the matter." I then said to him that I had joined with Mr. Bowen at the beginning of the week in making that demand upon him to retire; that I had written that letter at Mr. Bowen's suggestion; that Mr. Bowen had requested that such a letter should be written, and had said that the reason why he could not write it himself was that in the preceding February—that is, February, 1870—he (Bowen) had had a reconciliation with Mr. Beecher, and that Mr. Beecher had begged his pardon and had bent himself on the floor and wept, and Mr. Bowen had freely granted him forgiveness for the crimes which he had committed, and that Mr. Bowen said in view of

having granted that forgiveness he could not initiate proceedings against Mr. Beecher, but that if I would initiate them by sending such a challenge he (Bowen) would sustain that demand, and in the interest of morality and religion expel Mr. Beecher from his pulpit and from the city. That he furthermore had said that he (Bowen) had it in his power at any time to drive Mr. Beecher out of Brooklyn within twelve hours. Mr. Beecher again spoke of his astonishment that Mr. Bowen should have said such things to him—or to me—on Monday, and then have expressed himself in a friendly way, as Mr. Beecher described it, on the occasion of delivering him the letter. I then told Mr. Beecher that after I had had this interview with Mr. Bowen I had narrated the substance of it to my wife; that my wife was ill, and that this intelligence filled her with profound distress; and that she had instantly said to me that it was a violation of my pledge and promise to her, made in the preceding Summer, that I would never do the Rev. Henry Ward Beecher any harm, or ever assist in any exposure of his secret to the public. She said to me: "If Mr. Bowen makes a war upon Mr. Beecher, and if you" [that is, myself] "join in it, and if Mr. Beecher retires from his pulpit, as he must under such an attack, everybody will, sooner or later, know the reason why, and that," said she to me, "will be to my shame and to the children's shame, and I cannot endure it."

Mr. Evarts—Now, if your Honor please, this indicates the nature of the communication concerning which my objection applies. I am understood, of course, as objecting distinctly to every branch of this.

Mr. Fullerton—Of course.

The Witness—Mr. Beecher then asked me what I meant by speaking in that way of Elizabeth and her shame; so I then read to him the copy of Mrs. Tilton's confession—a copy which I had made in the early part of the evening, the original of which was in Mr. Moulton's possession.

Q. What did you read to him?

Mr. Evarts—The paper.

Mr. Fullerton—Where is that paper? A. That paper has been destroyed.

Q. When was it destroyed? A. It was destroyed by Mrs. Tilton's own hand.

Q. The copy you took, I mean? A. The copy was destroyed that evening during the interview.

Q. During the interview? A. Yes, Sir.

Q. In Mr. Beecher's presence? A. Yes, Sir.

Q. Now, the original? A. The original was destroyed two years later by Mrs. Tilton in my presence.

Q. Is that the one that Mr. Moulton speaks of in his testimony? A. Yes, Sir.

Q. Destroyed immediately after the "tripartite agreement" was signed? A. Yes, Sir; after the tripartite agreement was signed at Mr. Moulton's house.

Q. That is the one Mr. Moulton spoke of as having been destroyed at that time? A. Yes, Sir.

Q. Now, what was that paper that you thus read to Mr. Beecher?



# ARGUMENT ON THE ADMISSION OF THE CONFES- SION.

Mr. Evarts—I object to the witness giving the contents of that paper, on the ground that it appears by the testimony of the witness that it has been willfully destroyed.

Mr. Fullerton—If the gentleman means by “willfully,” that it was destroyed “purposely”——

Mr. Evarts—Yes, Sir; for the purpose of blotting it out of existence.

Mr. Fullerton—That does not prevent us from giving the contents of it.

Mr. Evarts—If we are to be judged by papers, let us be judged by papers, and not by papers that have been willfully destroyed; and when the parties admit that spoliation of evidence they must take the consequences of having destroyed the paper, and not reproduce not the paper but a remembrance of it.

Mr. Fullerton—The gentleman is exceedingly anxious to be judged by a paper he knows is destroyed and cannot be produced.

Judge Neilson—It has long been settled that in a case where a party would have the right to prove the loss of an instrument, and so admit evidence of its contents, he cannot be allowed to do so, provided he himself has destroyed the paper. The question is, whether this is a destruction of a paper by this witness.

Mr. Fullerton—This paper was not destroyed at a time when any litigation was contemplated; it was not destroyed for the purpose of depriving anybody from any benefit that might arise out of its particular phrases or what was written in it at all—no such object as that, as your Honor will see after a moment. It was destroyed because it was not thought advisable to keep such a paper in existence. Your Honor understands perfectly well the circumstances under which the original was destroyed. That is already in evidence. Mr. Moulton says he kept it until after the Spring of 1872, when the “tripartite agreement” was executed, and then it was delivered up to Mr. Tilton; and Mr. Tilton says his wife, in his presence, destroyed it; and your Honor will perceive that there was a reason at that time for the destruction of this paper which it was very proper to execute and carry into effect. The only reason I ever heard why we cannot give parole evidence of a written paper that has been destroyed is because it has been destroyed in fraud, for the purpose of obliterating the contents of the paper so that an advantage might be obtained in giving parole evidence of it. No such object existed in the mind of any party at that time at all. That is very apparent. The rule does not apply to a copy of the paper at all; it only applies to the original.

Judge Neilson—I am in doubt about your right to give the contents of a paper written by Mrs. Tilton, even if the papers were hers.

Mr. Fullerton—Why, Sir, this paper was read to Mr. Beecher; it was a communication to Mr. Beecher by Mrs. Tilton. It was not a communication made to anybody else, and your Honor will perceive in a moment it was designed by Mrs. Tilton for Mr. Beecher, and originally in the hands of Mr. Moulton—was intended for him; it was not delivered by Mr. Moulton to Mr. Beecher, and for that reason the copy was resorted to. Now,

what we propose to put in evidence here is a communication made by Mrs. Tilton to Mr. Beecher.

Judge Neilson—Under the ruling you have a right to do that. The question is whether you have a right to re-state a paper written by Mrs. Tilton. That is my doubt.

Mr. Evarts—A paper destroyed.

Mr. Beach—Your Honor has ruled your first proposition in regard to the right to re-state a paper written by Mrs. Tilton in your former decision. The only question now which is presented is upon the destruction of the paper.

Judge Neilson—I have not decided any such question.

Mr. Beach—I understand your Honor to decide that whatever was communicated to Mr. Beecher, although it may have been the statement of Mrs. Tilton, was admissible as between Mr. Beecher and the witness. Now, this witness states the contents of a paper not written by Mrs. Tilton, but written by himself, and which he says was in the possession of Mr. Beecher, being a copy of a statement originally drawn by Mrs. Tilton—that not being present. Now, the object of this evidence is not to prove any communication as between Mrs. Tilton and her husband; the purpose of it is to prove a communication made to Mr. Beecher, and to hear his answer to that communication—a communication which in itself, if your Honor please, reflects upon the conduct and character of Mr. Beecher, made under deliberate circumstances, at an interview called for the purpose of presenting to him a charge. The object and effect of this evidence is to show that either Mr. Beecher denied, or qualified, or admitted it. Now, no matter what the communication was, no matter from what source it originated, no matter in what form it was communicated, it is still a statement made to this defendant upon an occasion when he was called upon to defend himself from its force; and the character of the defendant presents the point and the pith of this evidence. Now, the paper referred to, in itself, did not prove the truth of what it contained. Any declaration that Mr. Tilton may have made to Mr. Beecher upon that occasion was not conclusive evidence of the proof of the charge. Its character as truth or falsehood depended entirely upon the conduct and the declaration of Mr. Beecher made in response to it. Suppose Mr. Tilton had taken from his pocket a paper and said to Mr. Beecher, reading it, “I accuse you of having illicit intercourse with my wife on a certain day;” that did not prove anything in itself; it was no evidence whatever to support the allegation. The force and effect of it depended upon the conduct and declaration of Mr. Beecher in answer to that accusation. Now, it does not involve at all a question of confidential communication as between husband and wife; and the only point of this objection, as I understand it, is that this paper was voluntarily destroyed by Mr. Tilton upon that very occasion; and, therefore, he cannot reproduce it from recollection. Now, I suppose we know very well what the rule is in regard to secondary proof of instruments lost or destroyed. I agree that, if this paper was destroyed with a fraudulent purpose, for the purpose of suppressing proof, for the purpose of advancing the interest of the party who then held it in possession, why, he cannot give parole evidence of its contents. But if it

was destroyed, as we propose to show, by a joint agreement and understanding, an admission and acquiescence of both these parties, at the time, they being the contesting parties and the only parties to be affected by its operation, why, then there was a mutual arrangement that this paper was no longer necessary and proper to be preserved, and that it should be destroyed. Will it be said that where two parties thus agree to the destruction of an instrument that the mouths of both of them are forever closed from publishing its contents—that it was not an innocent destruction in the way of business or by agreement, as between parties, and not possessing the fraudulent characteristic which closes the mouths of both as to its contents? Allow me to read to your Honor from the case of *Taylor vs. Riggs*:

"It is not, by any means, a matter of course to let a party give secondary evidence, even where he produces proof of the fact of the destruction. If the destruction was accidental, and occurred without his agency or assent, or even if it was voluntary and his own act, but yet done under a mistake so as to rebut all idea of contemplated fraud, inferior evidence will usually be allowed."

Now, our purpose is to show your Honor the circumstances under which this paper was destroyed, repudiating utterly the idea that there was any fraudulent purpose in the act, or that there could be any fraudulent effect resulting from it.

"Thus, should a party destroy a paper under the erroneous impression that it could be of no further value, he may, notwithstanding, prove its contents by secondary evidence."

These parties had not only a conversation, but I may say a partial reconciliation upon this occasion. They came to an understanding in regard to the contents of that instrument, and the use of the contents at that time I may freely admit, as I understand that was the fact. Here, then, is a destruction of the paper not only upon the part of Mr. Tilton, with the idea that it could be of no further use, but with the entire concurrence of Mr. Beecher, the defendant, in that conclusion. That destruction by mutual consent under the idea that then the subject matter contained in that paper was forever closed as between them, however subsequent circumstances may have revived the subject and introduced it to this controversy, nevertheless in the fact of that destruction under the impression then entertained by both of them, it cannot close the mouth of either of them as to the contents of the papers.

"Or should he destroy a note on its being paid in bank bills, he supposing at the time that they were genuine when in truth they were counterfeit, the same result would follow."

Suppose it should turn out on this occasion that upon certain assertions and considerations presented to Mr. Tilton as to the time he was drawn to the conclusion that this paper would be of no further use, but that subsequent actions on the part of Mr. Beecher revived the necessity for its use, can it be said any more than in the case of a note paid with counterfeit bills, the note being destroyed under the idea that it would be of no further use, can it be said that secondary evidence under like circumstances and involving the same principle, cannot be given? Now, the rule is:

"But a party who, under no pretense of mistake or accident, voluntarily destroys primary evidence to prevent its being used against him, or to create the excuse for its non-production, to injure the opposite party or for other fraudulent purposes,

thereby excludes himself from the benefit of inferior evidence."

It is only when the circumstances attending the destruction give rise to the imputation of a fraudulent intent, that a party is ever excluded from giving secondary evidence.

Mr. Evarts—This paper formed, it is said, the basis of the errand and the basis of the communication between these parties. It was destroyed voluntarily by this witness; the original was destroyed afterwards voluntarily by himself and his wife. Whenever anybody undertakes to prove that Mr. Beecher destroyed either, or consented to the destruction of either, it will be time enough to talk about another basis of my objection than that upon which I now put it. Now, what does the law think of the kind of evidence—the oral substitute for such papers, or oral communications remembered years afterwards by a witness who says he cannot give the words? Let me read to your Honor from what Judge Redfield says, in his edition of *Greenleaf*, Sec. 200:

"In a somewhat extended experience of jury trials," says Judge Redfield in his edition of *Greenleaf on Evidence*, §200, "we have been compelled to the conclusion that the most unreliable of all evidence is that of the oral admissions of the party, and especially where they purport to have been made during the pendency of the action, or after the parties were in a state of controversy. It is not uncommon for different witnesses of the same conversation to give precisely opposite accounts of it, and in some instances it will appear that the witness deposes to the statements of one party as coming from the other, and it is not very uncommon to find witnesses of the best intentions repeating the declarations of the party in his own favor as the fullest admissions of the utter falsity of his claim. When we reflect upon the inaccuracy of many witnesses in their original comprehension of a conversation, their extreme liability to mingle subsequent facts and occurrences with the original transactions, and the impossibility of recollecting the precise terms used by the party, or of translating them by exact equivalents, we must conclude there is no substantial reliance upon this class of testimony. The fact, too, that in the final trial of open questions of fact, both sides are largely supported by evidence of this character in the majority of instances, must lead all cautious triers of facts greatly to distrust its reliability."

Now when that kind of evidence is sought to be substituted for a written letter, *littera scripta manet*, give us that and we shall know what they talked about and what was said. It is the destruction of that paper that has been the motive and the opportunity of keeping alive this scandal to this time. That paper, produced, would show exactly what was said and proposed as the subject of accusation and of consideration. That paper in the original, it is said, was in the hands of Moulton, and his pledge and promise to Mr. Beecher was that he would keep that paper, with the paper that Mr. Beecher surrendered to him, which was its retraction, so that the two should not be separated, and it should be known precisely, whenever any opportunity was raised for scandal, what the charge was and what the retraction was; and that trust assumed, upon which Mr. Beecher delivered to Mr. Moulton the retraction for safe keeping, that pledge was violated by the separation of the papers and the destruction of the one by Mr. Tilton and his wife. Now, the copy he has destroyed; and what is the rule of law in regard to persons who seek to adduce this unsatisfactory evidence which "cautious triers of facts" pay little attention to, in the



place of what all of us desire to have here as the very written position that was considered. In the case of *Blade vs. Nolan*, 12 Wend., giving the decision:

"*Held*, that proof that plaintiff deliberately and voluntarily burned the promissory note on which his suit was subsequently brought, would not authorize the introduction of inferior or secondary evidence. And *held*, that the rule allowing secondary evidence cannot be extended beyond the case where the paper was lost or destroyed by time, mistake or accident (including loss by negligence or laches of the party as his attorney), and the Court add: "*We know of no honest purpose for which a party, without any mistake or misapprehension, would deliberately destroy the evidence of an existing debt, and we will not presume one. From the necessity and hardship of the case, the courts have allowed the party to be a competent witness to prove the loss or destruction of papers, but it will be an unreasonable indulgence, and a violation of the just maxim that no one shall take advantage of his own wrong, to permit this testimony where he has designedly destroyed it.*"

If, then, the obliteration of this direct proof was the settled purpose of the witness who now appears to give its contents, that is enough. Other people's interests are not to be placed in a worse position when the motives upon which he destroyed the accurate evidence are replaced by motives for reproducing its older effect. In the case of *Renner vs. Bank of Columbia*, 9 Wheat, 581,

"The Court, Thompson, J., says: 'This rule of evidence must be so applied as to promote the ends of justice and guard against fraud or imposition. If the circumstances will justify a well grounded belief that the original paper is kept back by design, no secondary evidence ought to be admitted.'"

In the case of *Broadwell vs. Stiles*, 3 Halst. N. J., 58, it appeared that the plaintiff himself had obliterated the indorsements on a note, so that the handwriting could not be judged of, and he at the trial offered to prove by witnesses that the erased signature was not the genuine signature, which was permitted. The erasure was voluntary and not by accident or mistake. It was not pretended that it was by accident; it was voluntary.

The Court say: "He who voluntarily, without accident or mistake, destroys primary evidence, thereby deprives himself of the production and use of secondary evidence. The best evidence is required, and if a party having such in his power voluntarily destroys it, the law knows no relaxation for him, whatever may be given to accident or misfortune. The fact of destruction excites suspicion and unfavorable presumption. \* \* \* \* To admit of evidence under such circumstances is as repugnant to principle as to deny a party the cross-examination of the witness of his adversary."

Now, your Honor will perceive. It does not speak of fraud. Consider before you purposely destroy an instrument, whether or no you wish to preserve its contents alive. The destruction here was on the motive of suppressing the contents, and not having the paper known. Now, when the interests of other parties require that if the paper is produced in any shape it shall be produced in its real shape, it cannot be subverted by the act of the witness himself, that has substituted his oral memory for the written instrument, under its voluntary destruction. The Court say to do that is as repugnant to principle as to deny a party the cross-examination of the witness of his adversary. In 2 Abb. Ct. App. Dec. (1864) the exception to the rule admitting secondary evidence is stated thus:

"If the papers be purposely destroyed by a party having an interest in its contents, he shall not be permitted to substitute secondary evidence, because *the willful destruction of the more reliable witness tends to throw suspicion upon the verity and authenticity of the inferior evidence.*"

Now, there was a single case before the Supreme Court of Massachusetts known as the *Count Johannes vs. Bennett* (5 Allen Mass., 169). Count Johannes being a suitor for the hand of a woman, her parents were greatly fearful that their daughter would accept him, and procured defendant, a clergyman who had formerly been the pastor of the family, to write her a letter dissuading her from the match. The Count received the letter from his intended wife, and the day before their marriage he burned it, and did not take a copy. He subsequently sued the writer for libel. *Held*, that it was error to allow him to testify to its contents without first rebutting the presumption against him arising from its destruction. It does not appear that this ground for the objection to the oral evidence was assigned at the trial. The Court say this

"Was a violation of the cardinal principle that *when it appears that a party has destroyed an instrument or document, the presumption arises that if it had been produced it would have been against his interest, or in some essential particular unfavorable to his claims under it.*"

Now, this is the inference the law draws, not dependent upon any fact. The rule of substitution is reluctantly accepted by the law, and only to avoid the greater injustice or misfortune of accident or mistake disturbing the authenticity of evidence. Now, the circumstances of this case are all one way in their indication. This interview thus held turned wholly on that paper. That was what this witness talked about; that is what Mr. Beecher talked about if he opened his mouth; that is the subject, the interest and the purpose he disclosed. It was that this communication should be the end of all. That is this witness's view. Now, this paper was destroyed. Mr. Beecher's only desire was that that paper, when it originally became the subject of consideration between him and Moulton, and he was asked to give up the retraction of that paper, that the papers should not be separated, that he should keep his own, or, if he gave it up, he should know that the paper to which it applied was kept in the same condition also for evidence. Now, whenever Mr. Beecher is shown as a party to the destruction of either of these papers, it will be time enough to suggest that the rule I have insisted upon is to be buried.

Mr. Tilton—Will your Honor have the kindness to inform me whether I can name the circumstances?

Mr. Beach—Wait one moment, Mr. Tilton.

Mr. Evarts—There is a very prominent case of *Farall vs. Farall*, in 4 New-Hampshire, where it was held that where a grantee canceled a deed with the intent to re-vest the title (and the deed not delivered or recorded), that it would not have this effect directly, yet the destruction being voluntary, he could not give it in evidence, and so indirectly it should work the consequence intended.

Judge Neilson—The deed must have been delivered in that case.

Mr. Evarts—Yes; but probably not recorded.

Mr. Beach—This case last read by the learned counsel, I think, illustrates the proposition which I intended to submit to your Honor, that all these cases read by the counsel apply to examples where the instrument in question was in some degree the foundation of the action, or direct and influential evidence in itself of the action. Now, this paper, Sir, which we offer to prove the contents of, was an incidental circumstance in the course of the interview between the parties to this action. The counsel falsely assumes that it was the foundation of the interview. It may have been the instigation of that interview, but it was by no means the essential subject-matter of the communication which then passed between these parties. Had not that paper been produced and read from, had Mr. Tilton upon that occasion stated from recollection and by parole, as he did state to Mr. Beecher, the contents of that instrument, nobody would pretend that the paper itself must be produced. It was not what the paper contained; it was what Mr. Tilton stated to Mr. Beecher, the impression conveyed to the mind of Mr. Beecher in regard to the subject of the then communication made by Mr. Tilton. Whether it came from the paper or from the unaided recollection of the witness is totally immaterial. In the case of the deed, the deed was the evidence of title. In this case the paper which Mr. Tilton read from was not evidence at all as between the parties. Your Honor perceives at once that the declarations contained in the paper cannot be held as evidence of the fact which it recited. It was the statement which the paper conveyed to Mr. Beecher I repeat, and his acceptance or rejection of its truth, which constitutes the pith of the evidence, and whether Mr. Tilton stated the contents of that paper correctly or erroneously is a matter totally immaterial. It was the idea conveyed to the mind of Mr. Beecher, no matter what form of words, it was the substance of the fact communicated to him that he was called upon to meet upon that occasion. But will your Honor permit me to refer you again more particularly to the case of *Riggs vs. Taylor*, 9 Wheaton, 483.

"Thus, should a party destroy a paper under the erroneous impression that it could be of no further use, he may, notwithstanding, prove its contents by secondary evidence."

Now, Sir, that is the general principle applicable to all cases. And it is not true, as the counsel assumes, that the law permits this secondary evidence reluctantly. If a party destroys an original under a mistake of fact, under the idea that it is of no longer use, as if he destroys a paid note, supposed to be paid by genuine bank bills, or as if he throws aside a letter written in the ordinary course of business which he does not conceive important to preserve, whenever it becomes necessary to prove the contents of the note or of the letter, the law, in the pursuit of truth and justice, and with indulgence to the circumstances under which the paper may have been destroyed, permits the secondary evidence, and there is no reluctance on the part of the law in the permission; there is nothing in the rule which is an indulgence to either of the parties; and it is only when the destruction appears to have been not only voluntary, but fraudu-

lent, that the party is concluded by its destruction; I conceive, Sir, that this law is abundantly established, not only by authority but upon principle. But your Honor will perceive that we propose to show this destruction was by the mutual concurrence of the parties to the interview on that occasion. Mr. Beecher concurred in it; and the result of that interview produced the destruction of the paper; and if subsequent developments between the parties renders the contents of that letter at all material, there is nothing in this rule which precludes either from testifying. The gentleman apprehends mischievous effects from this rule, and at the time of the decisions to which he referred, and upon which we must chiefly rely, there was some force in the suggestion as to a party who destroys a paper in regard to which he seeks to give secondary evidence, the lips of his adversary being closed as to its contents. But here Mr. Tilton gains no advantage. Mr. Beecher is a witness equally competent, we may assume equally credible, with himself, knows the contents of this paper, as communicated to him. He is at perfect liberty to dispute the testimony of Mr. Tilton, in regard to its contents, and may himself give the general idea and impression of the subject in the paper handed to him. Where is the mischief, Sir, where is the danger? If there is any misapprehension in the recollection of Mr. Tilton, it will be met at once by the conflicting memory of Mr. Beecher. The evidence of these gentlemen, their credibility being equal, is balanced upon that question, and it simply becomes a point of memory as between the two. And so far, Sir, as the argument of the learned counsel is directed to the question of the credibility and the effect of the confessions or declarations or proof of them made by parole, it is not necessary for me to discuss here that question. Counsel has used the occasion for the purpose of making some suggestions which may be pertinent in the ultimate argument of this cause, but do not seem to me to be so here; and I, therefore, submit to your Honor, as this paper is but an incident in a general conversation, a transaction as between these parties, and as it was destroyed by the mutual assent of both parties, nay, with the concurrence and at the request of Mrs. Tilton herself, I submit to your Honor that this evidence must of necessity be competent, and it is essential for the purpose of understanding what was the declaration by Mr. Beecher upon that occasion, and giving point and effect to those declarations.

Judge Neilson—Mr. Fullerton, proceed with your examination, omitting for the present the contents of that letter or paper.

#### THE VERBAL RECITAL OF GUILT.

Mr. Fullerton—What did you say to Mr. Beecher upon that occasion? A. After I read to him the paper he lifted his hand as if he were about to speak, and I said, "No, Sir; hear me through, and speak then;" and I then detailed to him what, by the ruling of his Honor, I am not permitted to disclose here, that is, the story which Mrs. Tilton had told me in the middle of the preceding Summer.

Mr. Beach—No, Sir; that is not excluded.



Mr. Evarts—We object to it.

Mr. Fullerton—Well, it is not excluded yet.

Judge Neilson—Well, give the conversation, whatever it was.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton—Give us the conversation. A. I told Mr. Beecher that in the early part of July, previous to that interview, Mrs. Tilton had come home unexpectedly from the country, and had said to me that the object of her return was to communicate to me a secret, which had long been resting on her mind like a burden, which she wished to throw off; that she had, on several previous occasions, come almost to the point of making such a statement to me, and once in particular while on a sick bed, but that she had never until then, having been restored to health, been brought quite to the point of courage to make the disclosure; that before she would announce to me what the secret was, she exacted from me a pledge that I would do no harm to the person concerning whom the secret was to be told, and furthermore, that I would not communicate to that person the fact that she had made such a revelation to me, because, as she said, she wished to inform him of that revelation herself; that I had given to her this pledge, my word of honor, that I would neither disclose her secret, whatever it might be, nor would I injure the person concerning whom the secret was to be told; that she then said to me that it was a secret between herself and the Rev. Henry Ward Beecher, her pastor; that, as I was well aware, there had been, during a long course of years, a friendship between herself and her pastor; that this friendship, contrary to my expectation or belief, had been in later years more than friendship, it had been love; that it had been more than love, it had been sexual intimacy; that this sexual intimacy had begun shortly after the death of her son Paul; that she had been in a tender frame of mind, consequent upon that bereavement; that she had received much consolation during that shadow on our house, from her pastor; that she had made a visit to his house while she was still suffering from that sorrow, and that there, on the 10th of October, 1868, she had surrendered her body to him in sexual embrace; that she had repeated such an act on the following Saturday evening at her own residence, 174 Livingston-street; that she had consequent upon those two occasions, repeated such acts at various times, at his residence and at hers, and at other places—such acts of sexual intercourse—continuing from the Fall of 1868 to the Spring of 1870; that in July, 1870, she had made to me a confession in detail of those acts; that she had given to me also, during that recital, many of the reasonings by her pastor communicated to her to change what was her original scruples against such a sexual intimacy.

Mr. Evarts—Mr. Tilton, do I understand that this is what you said to Mr. Beecher? A. Precisely, Sir; that she had in the early stages of their friendship been greatly distressed at rumors concerning Mr. Beecher's moral integrity; that she wished to show to him that there was a woman who was superior to the silly flatteries with which many ladies in his congregation had courted his society; that she wished to

demonstrate the honor and the dignity of her sex; that she had done so in her own thought, until finally she had been persuaded by him, that as their love was proper and not wrong, therefore it followed that any expression of that love, whether by the shake of the hand, or the kiss of the lips, or even bodily intercourse, since it all was the expression of that which in itself was not wrong, therefore that bodily intercourse was not wrong; that she had said to me that Mr. Beecher had professed to her a greater love than he had ever shown to any woman in his life; that she and I both knew that for years his home had not been a happy one; that his wife had not been a satisfactory wife to him; that she wished—that he wished to find in her, Elizabeth, the consolation, the help to his mind, and the solace of life which had been denied to him by the unfortunate marriage at home; that he had made these arguments to her during the early years of their friendship, and she had steadfastly resisted; that he had many times fondled her to the degree that it required on her part almost bodily resistance to be rid of him; that after her final surrender during the period of her sorrow, in October, 1868, he had then many times solicited her when she had refused; that the occasions of her yielding her body to him had not been numerous, but that his solicitations had been frequent and urgent, and sometimes almost violent; that she made this confession to me because the sense of deceitfulness in her mind was a pain to her conscience; that she had gone away from home in the Spring—parting from me—under a cloud, as I knew, and that I had written to her in her absence a letter, saying that unless she told me the truth, that if she ever lied to me as she had done in reference to a few minor matters, that I never again could hold her in any respect; that that letter had rankled in her thought and heart; that she felt that she never could look me honestly in the face again until she had made a full and free confession; that she had come down from the country on purpose to make it, and that she had made it with great modesty and delicacy and womanly feeling, without giving evidence that the great fact which she confessed was wrong, but that the wrong which she wished to throw from her mind was mainly the necessary deceit with which she had hitherto concealed it from her husband. In making this recital of what I said on that occasion to Mr. Beecher, I beg again to remind the Court that I do not undertake to repeat the exact language which I used. It was a long story. I told it from a little memorandum which I had made, of dates, times, extracts from letters—a little memorandum made on the back of the white envelope, unaddressed, in which Mrs. Tilton's statement that evening had been lodged; I had taken out the statement and handed it to Mr. Moulton; I had said to him—

Mr. Evarts—Well?

MRS. TILTON'S INTERCESSION FOR BEECHER.

Mr. Fullerton—You need not state that. A. On the back of that envelope I had made these memoranda; the copy was made on the same envelope, and in my narration to Mr. Beecher I unconsciously picked the paper to pieces, and at the end of my narrative I had destroyed not

only the memoranda of the conversation but also the copy of the paper which Mr. Moulton possessed. I furthermore told Mr. Beecher on that occasion that Mrs. Tilton, after her confession in July, had gone into the country; that she had become a broken-hearted woman; that later in the Summer she had gone from her country avocation home, to the far West, or rather to a considerable distance in the West; that she had returned from the West a few weeks previous to this interview, I think about the 1st of December, this interview taking place on the 30th; that shortly after her return, or almost the first conspicuous incident that happened to her husband since her return, was the interview which I had had with Mr. Bowen on the 26th of December, which had resulted in my demand upon Mr. Beecher that he should retire from his pulpit. I told him that I had informed Mrs. Tilton of what I had done with Mr. Bowen, and that she received the intelligence with an expression of heart-break and grief. I believe, however, I have already recited that. I told him that in regard to the statement which she had written, that it had come about in this way: she had asked me as soon as I had informed her of the letter that I had written to Mr. Bowen—she had asked me immediately to send for Mr. Beecher, and to hold an interview with him in her sick chamber, that she might hear me say to him that that letter should be withdrawn, that she might hear with her own ears, immediately, and before he should have any time to be troubled about it; that though I had joined with Mr. Bowen in demanding Mr. Beecher's retirement from the pulpit, yet for my wife's sake, and for the word of honor which I had pledged to her to do Mr. Beecher no harm, that I should send for him and that she should hear me immediately and without delay take back that letter, and assure Mr. Beecher that I would not unite with Mr. Bowen in making any assault upon him, or in demanding him to quit the pulpit or the city. I told Mr. Beecher furthermore that I had refused to acquiesce in Mrs. Tilton's request that such a personal interview should be held between him and me, in my wife's chamber. I then told him that she had insisted four or five times, until finally she begged me to be the bearer of a letter to him; that I had then declined that; that finally, she asked me if I could not devise some method which would not be humiliating to my pride, to have an interview with him—a friendly interview, as friendly as possible, and after thinking the matter over, that I had said to her that if she would agree I would request Mr. Moulton to bring about such an interview between Mr. Beecher and myself. She said she was only too happy to hear me say so, and she wrote a statement to which I have referred, to be the basis of an interview between Mr. Beecher and myself which Mr. Moulton should bring about. After she wrote it, which was on the 29th of December, I still felt great reluctance that Mr. Moulton should know the facts of the case.

Judge Neilson—Better adhere to that in your conversation.

Mr. Fullerton—He is telling Mr. Beecher.

Judge Neilson—Oh!

The Witness—That I had carried that letter—

Mr. Evarts—Is this what you told Mr. Beecher? A. Yes, Sir; that I had carried that letter ever since yesterday, that is, since the 29th, and had only made up my mind a few hours ago, I said, to permit Mr. Moulton to know the facts, and to bring about the interview. I cannot remember distinctly all that I said to Mr. Beecher, the substance of it; the main portion of it consisted in the recital to him, as nearly as I could, of Mrs. Tilton's story. Toward the conclusion of it I again reminded him of the object for which I had sent for him, which was that though I had communicated to him, through Bowen, a demand for his retirement from his pulpit, yet that, at my wife's earnest entreaty, I revoked that demand, and for my wife's sake, and not his or mine, I pledged to him my word that I would not assist Mr. Bowen in the hostility which he had meditated against Mr. Beecher.

Q. Are you through now with your narrative substantially?

A. At the close of the narrative, Mr. Beecher sat in his chair, and I thought he was about to speak; I waited a moment; his face, and his head, and his neck, were blood-red, and I feared for the moment that there would be some accident to him. He burst out with these words: "Theodore, I am in a dream; this is Dante's Inferno." I had meanwhile gone to the door, unlocked it, but partly opened it, and said to him: "You are free to retire." He did not seem to hear what I said; and I again pointed to the door and said that he might go. He rose and walked toward the door, as if he was going out without saying to me a word; then he suddenly turned, and looking me in the face he said: "May I go once again, and for the last time, to see Elizabeth?" I instantly answered no, and then, yes. If I am allowed to state the reason I will state the reason.

Q. No; state what you said? A. I said no, and then yes; then I said: "But in going to see Elizabeth, see to it, Sir, that you do not chide her for the confession which she has made. She is at home—sick, heartbroken. I charge you that you visit upon her no reproach for confessing to her husband; for if you smite her with a word," I said, "I will smite you in a ten-fold degree. I have hitherto spared your life when I had power to destroy it; I spare it now for Elizabeth's sake; but if you reproach her I will smite your name before all the world." As he turned to go away, I said to him—I don't think I can recall the exact words, but the substance was this, that I can remember—"that his duty was henceforth so to conduct his battle with Bowen that Elizabeth and her name and fame should not be involved." He stood a moment on the threshold, and putting both his hands, in this way, up to his head—the redness in his face increasing all the while—he said: "This is all a wild whirl!" and he left me and went down the stairs.

Q. Did you go to the head of the stairs? A. I did.

Q. State whether you saw Mr. Moulton when you arrived there? A. I saw Mr. Moulton at the foot of the stairs.

Q. Did you hear what occurred between Mr. Moulton and Mr. Beecher? A. I did.

Q. State what it was? A. Mr. Beecher went down the stairs with his hand on the rail, staggering, and I thought he was about to fall; coming toward the foot of the stairs Mr. Moulton there stood and I heard Mr. Beecher say to Mr. Moulton: "Have



you seen Elizabeth's confession?" Mr. Moulton bowed and said, "Yes; I have." Mr. Beecher then said: "This will kill me."

Q. And what became of these two persons then? A. Mr. Beecher and Mr. Moulton immediately went into the parlor and closed the door behind them.

Mr. Fullerton—I suppose I need not commence a new topic, Sir; it is the hour of adjournment.

Judge Neilson—Gentlemen will please keep their seats a moment. The Jury will be in their seats at two o'clock.

After recess the examination of Mr. Tilton was resumed, as below:

Mr. Fullerton—In that interview did you state to Mr. Beecher anything about the fact whether you had learned that no communication had been made to him of Elizabeth's confession to you? A. Yes, Sir.

Q. What did you say upon that subject? A. I told Mr. Beecher that when I had written to Mr. Bowen, and had sent the letter demanding his retirement from his pulpit, that I immediately communicated that fact to Mrs. Tilton, who said at once that Mr. Beecher might not and probably would not understand the reason of that demand, because she had not yet communicated to him the fact that she had ever divulged to me the story of their criminal relationship.

Q. Did she tell you anything further upon that subject, about the communication of the fact to Mr. Beecher?

Mr. Evarts—With that we have nothing to do.

Mr. Fullerton—Which was communicated to Mr. Beecher?

Mr. Evarts—Well, I think we are entitled to have the question put distinctly. "Did you say anything further to Mr. Beecher?"

Mr. Fullerton—Well, that's the question I have put, only in my form instead of the gentleman's, that is all.

Mr. Evarts—No, it is not permitted to ask this witness to tell whether his wife told him anything.

Judge Neilson—Of course.

Mr. Fullerton—And for that reason I have not asked it.

Mr. Evarts—Ah! your question was, "Did she tell you anything else which you communicated to Mr. Beecher?"

Mr. Fullerton—Yes, Sir.

Mr. Evarts—And that is not allowable.

Mr. Fullerton.—Yes, it is allowable.

Mr. Evarts—Well, the Court has said otherwise.

Judge Neilson—Suppose you ask him whether he said anything to Mr. Beecher on that subject, and, if so, what.

Mr. Fullerton—Very well, Sir; let that be the question, then; all that I want is the fact. [To the witness]: Did you say anything further to Mr. Beecher upon that subject? A. I don't recollect anything in particular, except that I mentioned to him the reason why she had made a written statement of a fact which he, of course, knew as well as she, and that the reason for her communicating in writing the fact that she had confessed to me, was that she had never previously communicated that fact to him, namely, her confession to me—in other words that the letter—

Mr. Beach—Yes, yes, in other words: state—

The Witness—in other words, that the note or paper which

Mrs. Tilton wrote, and which Mr. Moulton then had in his possession, and of which I read a copy to Mr. Beecher, was written by Mrs. Tilton because she had not previously informed Mr. Beecher that she had made a confession to me, and that that was the method which she took to inform him that she had made to her husband such a confession.

Mr. Evarts—You told all this to Mr. Beecher, did you? A. The substance of it all; yes, Sir; I can't give the exact words in which—it was a long narrative.

Mr. Fullerton—Now, I will put this question to you. State, as near as you can recollect, the contents of this paper which you read to Mr. Beecher.

Mr. Evarts—Well, that we object to; you have destroyed it.

Judge Neilson—I must rule that out.

#### ANOTHER CONTEST OVER THE WRITTEN CONFESSION.

Mr. Fullerton—Enter an exception to that ruling. [To the Witness]: State as near as you can what you stated to Mr. Beecher from that paper which you held in your hand.

Judge Neilson—He has given us the conversation.

Mr. Fullerton—The conversation, Sir, which occurred subsequent to the reading of the paper.

Judge Neilson—I don't think this is a paper that ought to be repeated here in any sense. I so rule, and you take an exception, please.

Mr. Fullerton—Well, I only put it in another form so as to save the exception.

Mr. Beach—But the proposition now is to prove what the witness said to Mr. Beecher was the confession or statement of his wife.

Judge Neilson—Yes.

Mr. Evarts—He has stated that already.

Judge Neilson—In other words, giving him the contents of the paper.

Mr. Beach—Certainly.

Judge Neilson—Well, I rule it out.

Mr. Evarts—He said that he read it.

Mr. Beach—Wait one moment; I think we should understand this, Sir. Does your Honor rule this out upon the idea that it was a confidential communication?

Judge Neilson—Partially so. I don't think it is proper for me to receive anything that this lady writes under any circumstances, unless it comes in without objection. Two of her letters are in already, because they were read without objection. My ruling is on both grounds.

Mr. Beach—Well, is your Honor's mind open to approach on this subject?

Judge Neilson—Well, really, I hardly think it is now. I have a very firm conviction about it.

Mr. Beach—And your Honor will not listen to authorities in point?

Judge Neilson—Oh! I don't say that, Sir. I would be sorry to say that, even, unless it was some elementary statement which we ought both to know, of course.

Mr. Beach—Have you sent for Greenleaf?

Mr. Fullerton—Yes, Sir.

Mr. Beach—In a case before Lord Hardwicke, Phillips says, in the first of Cowen and Hills, notes upon the text :

"He would not suffer a wife to be a witness though her husband consented. 'The rule,' he said, 'is for the peace of families, and such consent should never be encouraged.' But in another case, Best, Chief Justice, expressed his willingness to receive the evidence of the defendant's wife, if the defendant consented; but there he refused his consent. Where a party consents that his wife shall be examined as a witness against himself, there can be no violation of confidence, which is a principal ground of the rule of exclusion. But the probability that, if such evidence were generally admitted, family dissensions might be increased, is not altogether obviated by the circumstance of the consent."

Now, here, Sir, we show, not only the consent of the wife, but the express injunction of the wife that this should be communicated to Mr. Beecher. It was prepared for the very purpose of communication to him, and intrusted to her husband for that purpose. Here, then, are the two parties who are alone competent to insist upon the inviolability of what are called confidential communications, agreeing that they shall be communicated to another party, that party being himself intimately interested in the subject of the communication. Now, under this ruling, Sir, that here is the common consent of the parties to the communication of this matter to Mr. Beecher for the common safety and preservation of both the parties and with reference to a common desired result, it avoids entirely the objection of confidential communication.

"But the same reason applies to the declaration of the husband or wife. Where an action is brought by or against the husband, or by the husband and wife jointly, in right of the wife, the general rule is that the declarations of the wife are not evidence against or for the husband. In the action for trespass, etc.—in an action for goods supplied to the defendant's wife, who, as it appeared, lived separate, upon an allowance from him—it was held that her declarations as to the receipt of the allowance could not be admitted in his favor. A discourse between the husband and wife in the presence of a third person, may be given in evidence against the husband, like any other conversation in which he may have been concerned. Letters written by the husband or wife are subject to the same rule as their declarations."

Now, it makes no difference, Sir, that this communication came from Mrs. Tilton in the shape of a letter or a statement. I suppose it will be adjudged precisely the same as if Mrs. Tilton was present, making this declaration through her husband, authorizing the husband to make the declaration, or making to the husband in the presence of Mr. Beecher, the declaration contained in this instrument. Here is express authority, Sir, that such a communication between the husband and wife, in the presence of a third party, can be proved. And it seems to me, if your Honor recurs for one moment to the principle of the rule upon which this exclusion is founded, you will perceive that such declarations must be admissible. The rule of exclusion, Sir, is founded in the idea that the communication is made in the secrecy of the domestic household, and upon the faith of the relation between husband and wife; that it is a communication of secrecy which each understands to be inviolable, and which is necessary to be cultivated for the purpose of promoting the confidence of the marital

relation. Your Honor will at once grant that this is the rule—the principle upon which the rule is founded. Here is a communication evidently not made upon such reliance. Mrs. Tilton never read this statement to her husband in the confidence and faith of their relation, and upon the belief that it would be confined to his own breast. On the contrary, it was made for the purpose of communication to the very man to whom it was communicated. Now, Sir, the idea of secrecy, the idea that there was any confidence or faith as resting upon the relation of husband and wife, between her and Mr. Tilton, is entirely disposed of by that consideration. And how will your Honor answer this express authority?

Judge Neilson—I confess I think I should find it difficult, on second thought, to answer it. I would like to hear Mr. Evarts on that point.

Mr. Beach—I had a reference, Sir, if your Honor will permit me to refer the counsel to it. While the gentleman is addressing you, Sir, I will find the additional authority. I do not put my hands upon it at the moment.

Mr. Evarts—My learned friend puts it on the proposition, as I understand him, cited from "Phillips on Evidence," that a discourse between the husband and wife, in the presence of a third person, may be given in evidence against the husband like any other conversation in which he may have been concerned; that is the proposition. Now, that proposition, correct enough, no doubt, in the case in which it is laid down, would require a good deal of qualification as to its not being a confidential communication, notwithstanding there was a third person present, because there might be a third person in the position of counsel, or a third person in the position of physician, or a third person in the position of parent or adviser in the very confidence which was being reposed. But obviously that case was not concerned in an inquiry of that kind. Now, it is said, that this letter, or written paper, addressed by Mrs. Tilton to some one, I suppose—Mr. Beecher, perhaps—is not in the position of a confidential communication, because it was confided to the husband to be repeated to Mr. Beecher.

Judge Neilson—That is the point.

Mr. Evarts—But, if your Honor please, the confidence in the husband by the wife was that it was to be repeated to Mr. Beecher in her interest and for the privacy of the matter and to avoid promulgation. I take the witness's own view of it. That was used in that interest and for that purpose, and the whole object of this interview was the securing, from Mr. Beecher of suppression of any controversy, in any tendency it might have, to involve this question of this wife. That is the story. One would suppose Mr. Beecher might be trusted if there was any truth in this matter to keep this thing private on his own account, as people usually do in their own interest. But that is the story; that is the proposition. And now, when the paper is destroyed, the proposition is to promulgate its contents (notwithstanding the destruction of its terms which the wife might be willing to be bound by and which could be read), as what she had consented to have communicated to Mr. Beecher, and, after destruction of this little shred of protection of the wife, pa



in her husband's mouth, on the plea, that it was not confidential, a reproduction of the destroyed paper. Now, if your Honor please, I have not heard any answer satisfactory to my views of the law, and I have not heard from your Honor that you had heard any such views as entitled this speaker to take the place of his wife's statement and of that written paper which he has destroyed. Is it pretended that anything that has fallen from him now, in the way of evidence about that paper, has changed it from the position in which it stood when he said that he had destroyed it, and when my learned friends propose to put the proposition of its introduction on the consent of Mr. Beecher to its destruction. We have had the narrative of picking a paper to pieces. Now, whenever that is brought up it may be time for me to remark upon that; but I stand now upon my proposition in the first place that the whole narrative is inadmissible, as proceeding out, on his own theory of it, from a confidence of the wife, the letter as much as any other part of it, and the letter itself, as an item of evidence orally, because it has been destroyed. Because, your Honor will notice that if there has been any change of this copy, in its manner of destruction, the original at least was destroyed voluntarily by this husband and this wife.

Mr. Beach—The additional authority to which I wish to draw your Honor's attention is contained in the notes to "Phillips on Evidence," by Edwards, in a note to the 65th page of the first volume:

"The husband being dead, the wife is not incompetent to prove a fact coming to her knowledge by the open declaration of her husband in the presence of other parties"—referring to the 14th of New-Hampshire and other cases.

"But she cannot disclose communications made to her alone."

Now, the rule of exclusion, as your Honor has already heard from repeated authorities, applies as well to the case where the husband or wife, one of them, is dead, or to the case of a divorce. And yet it is here held in our own courts, that she may testify to what is expressively called open declarations of her husband and in the presence of third persons. My proposition is that if Mrs. Tilton had been present at this interview between her husband and Mr. Beecher, that everything she and her husband said upon that occasion would be competent, because, in the language of the authority, it was an open declaration in presence of third persons, and avoided entirely the idea of confidence and faith in reliance upon the matrimonial connection. How is it possible, if your Honor please, to say that a communication which husband and wife make in the presence of a crowd, or in the presence of a single person, is a privileged communication upon the idea that it is communicated between the two as a secret extorted by the confidence and the faith of the relation between the parties, and as necessary to the continuance and the maintenance inviolable of that relation, and of all the associations which spring out of that relation. Here is a changed condition, Sir. Here is, as we must accept the evidence in its present condition, a dishonored wife making the communication of her disgrace to her husband, and directing that husband to have an interview with her seducer, and the whole subject of the crime conversed between the two. Can it

be said that a communication of that character is a confidential communication, founded upon the relation of husband and wife and given only upon the faith of that relation and in the confidence of its inviolability. With great respect, Sir, may I not say, what utter nonsense it is to contend that any such confidence existed between these parties at that time, or that this communication was made in reliance upon it, when the wife in making it directs the husband to communicate it to her seducer? But, says the counsel, this was made for the benefit of the wife, to secure to her concealment and secrecy and immunity. What, according to the evidence, was the cause of this communication? Why, this husband had united with Mr. Bowen in a scheme to demand Mr. Beecher's retirement from the pulpit, and from his residence in the City of Brooklyn. It afflicted her sensitiveness and her sympathies. He was a great and good man, whom she loved, and whom she did not wish to be destroyed. She had extorted from her husband, at the time of her original communication, that he never would lift his hand in hostility against the person to whom the secret related, and in the pursuance of that feeling, and in its sympathy, when she found this husband uniting with the enemy of Mr. Beecher, she implores him to desist, in its upon it as a concession from him to her, not for the purpose of protecting her from any disclosure but for the purpose of carrying out the original pledge which she in her love for this man exacted, given by Mr. Tilton at the time the original communication was made. It was to protect and preserve Mr. Beecher, it was to save him from the coöperation of her husband in the attack and hostility which that husband and the wife understood Mr. Bowen was then prosecuting against Mr. Beecher, and for his protection she directs her husband in pursuance of her wish to have an interview with Mr. Beecher to assure him of his friendship and his aid in opposition to Mr. Bowen. Now, your Honor, if it is to be held under these circumstances that a communication of this character, made for this purpose, stated to Mr. Beecher, is not to be received in evidence, I ask your Honor to find some way of escape from these authorities to the effect that declarations of this character are admissible—admissible under all circumstances and for all purposes. So far as the counsel's objection to the whole of this interview is concerned, I understand your Honor to have ruled that question, and I do not propose to discuss it unless your Honor wishes to hear further debate and further authority upon that question; but I am very well assured, your Honor, that if, according to your Honor's ruling, we are entitled to give this interview between these two contending parties upon this subject, that this letter, the statement of which was made to Mr. Beecher, the contents of which he understood, and if we are further at liberty to prove the manner in which he met that statement, this letter, although it may be destroyed, must be evidence against him. Now, Sir, I was mistaken in stating to your Honor upon my former argument that this paper was destroyed by the mutual assent of the parties. From my general understanding of what the evidence would be I had supposed that there was a more deliberate and self-possessed conference between these two gentlemen, and that

there was some agreement in consonance with the wish and desire of Mrs. Tilton; but it now turns out, Sir, that in the agitation of that narrative made by Mr. Tilton to Mr. Beecher he unconsciously destroyed this paper contained in the envelope upon which he had memorandums of the subject upon which he was communicating to Mr. Beecher. I have read to your Honor, that if a paper is destroyed by mistake, without any intention of suppressing evidence, without any fraudulent purpose, that secondary evidence of its contents is admissible. This rule applies, Sir, where there is an unconscious destruction, where it is done without any purpose, without any consciousness at the time that it is being destroyed, and doesn't it fall under that rule which holds that where papers are destroyed by mere accident, it is competent to give secondary evidence? I submit to your Honor that it does, that these authorities are so direct and pertinent upon this question, that these is no possibility, independently of the reasoning, upon principle for the exclusion of this paper.

#### THE WRITTEN CONFESSION EXCLUDED.

Judge Neilson—I still think, Sir, that I must rule out the paper. Take an exception.

Mr. Evarts—I now move, if your Honor please, to raise this question, which formed, no doubt, a considerable element in our discussions of last week, and which I do not propose to renew at any length. I move to strike out the evidence given of this interview, because it is evidence upon the part of the husband pertinent to the issue, if at all pertinent to the issue, with the purpose and the tendency to disparage the reputation of the wife, to wit, to prove her adultery. Of course it does not prove it. It is merely a statement by their witness of what passed between him and Mr. Beecher, as based upon something that may or may not have passed between him and his wife. Your Honor has not allowed that to be proved as a matter of fact. But now the purport and tendency of this evidence, to wit, as a link or part of the progress of the proofs toward the demonstration of the adultery of the wife, is apparent. The generality of the question permitted an exploring of the interview, and when it is given it shows that its tendency and pertinency, if it have any proper tendency, and have any pertinency, is to prove an adultery of the wife as a link or part of the proof. I move to strike it out, it not being competent by our laws for the husband or the wife to testify against the repute of another in that degree of crimination.

Judge Neilson—You must take an exception, Sir; I deny the motion.

#### THE UNEXPECTED MEETING AT MOULTON'S.

Mr. Fullerton—I then call your attention, Mr. Tilton, to an interview with Mr. Beecher on or about the 3d of January, 1871. Do you recollect such an interview? A. Yes, Sir.

Q. Where did it take place? A. It took place in precisely the same room in which the other was held, that is, the second story, front room, in Mr. Moulton's house in Clinton street.

Q. Under what circumstances did you and Mr. Beecher

meet there on that day? A. Under these: I went to Mr. Moulton's house during the forenoon, perhaps not long after the morning. Mr. Moulton had not yet risen, being slightly unwell. While I was sitting with him the door bell rang and suddenly, without any expectation on my part, and I think also without any expectation on Mr. Moulton's part, Mr. Beecher entered the room.

Q. Now, please state what occurred at that interview? A. I instantly arose from my chair, and what I did I do not exactly know. I only remember that Mr. Moulton suddenly said to me that I ought not to refuse to salute Mr. Beecher in his house. I said to Mr. Moulton, "How can you expect me to speak to a man who has ruined my wife, broken my home, and who then gets my permission, in a sad and serious hour, to visit that woman, and uses that permission for the purpose of dictating to her and making her write down a lie?" Mr. Moulton then said to me, "But, Theodore, you must remember that Mr. Beecher has sent to you a letter through me humbling himself before you as he does before God. What more can you ask of him? What more could you ask of any man in such circumstances as that?" "Furthermore," said he, "this is my house, and Mr. Beecher is at present my guest, and you will oblige me," said Mr. Moulton, "if you will speak to him, at least as much as to say, good morning." I did say, "Mr. Beecher, Good morning." Mr. Beecher meanwhile sat on the edge of Mr. Moulton's bed. He turned around to me and said: "Theodore, I don't marvel that you do not feel like speaking to me. I feel more dread of being spoken to by you than you can possibly feel repugnance in speaking. All I have to say is," he remarked, "that I hope you found it in your heart to accept the communication which I made to you through Mr. Moulton. I dictated it," he said, "out of heartbreak and anguish. It expressed my sincere feelings. Nevertheless," said he, "I know it was but words, and words are little and nothing, and no words of mine, nor any acts of mine can ever undo the great wrong that I have done to you and to Elizabeth." He then said, "I do not put in any plea for myself, but only for her. Indeed, if you wish to carry out the demand which was communicated to me in your letter of Christmas Day, that I should retire from my pulpit, you have only to say the word and I will retire. The renting of the pews shall not go on. I will bow my head and go out of public life; only," said he, "I have this request to make—that if it be necessary for you to make a public recital of this case, that you will give me notice in advance of your intention to do so, in order that I may either go out of the world by suicide, or else escape from the face of my friends by a voyage to some foreign land. And, furthermore," he said, "I ask you to do me this favor: that whoever else in the wide world is to be informed of the facts of this case, at least my wife shall never know anything on the subject, for she is not only your enemy but may very readily become mine. If you can spare her the pang of having these facts communicated to her, I will consider that it is an additional occasion of gratitude." He said also that he did not wish me to understand that he solicited any mercy for himself alone, but only for his family,



and particularly for Elizabeth. He said: "I do not beg at all for myself, but for her. She was not to blame. I was altogether at fault. My sacred office and my years should have combined to have made me her guardian, not her tempter." He furthermore told me that the relationship which had existed between himself and Elizabeth, had not always been marked by sexual intimacy; that the earlier years of it were free from any such taint and crime, and that only during the last year, or a little more than a year, he said, and that year shortened by a country vacation, had that sexual intimacy existed. He furthermore said that he did not know how he could offer any mitigation or excuse for himself, and yet he said he wanted me to believe for Elizabeth's sake, and also for his own, that he had never sought her for any vulgar end, but that their sexual commerce had been through love, and not through lust; that he had never met any woman whom he had loved so well; that he had sought companionship in her mind; that he had taken manuscripts to her that she might be his critic; and that the blame—and this he repeated two or three times over—"The blame," he said, "belonged to me and not to her." And he added—and when he did so the tears came into his eyes—he added some words like these: "Tell me, before you go away, can you possibly ever reinstate Elizabeth in your respect and love?" He then buried his face in his hands; he sat on the edge or near the foot of Mr. Moulton's bed, and he used some figure of speech; I won't undertake to quote the exact words, but the picture was like this: he drew the figure of a man sitting on a brink, and said that he was dizzy, and was like one on the edge of hell. The only other words that I remember this moment, which he said, were to the effect that he was in great grief through Mr. Bowen's action in my case, the termination of my engagements with Mr. Bowen's papers, and said he felt that Mr. Bowen's suddenly changed mind had been largely due to statements which Mrs. Beecher had made to Mr. Bowen, and to statements which he himself had made, though he said that Mrs. Beecher had been more mischievous in her utterances than he. He mentioned also that he had voluntarily written a letter to Mr. Bowen, either that day or the day before, in which he had taken back some of the unkind references or injurious statements which he had made to Mr. Bowen concerning me.

Q. How long did that last interview last? A. I don't know how long Mr. Beecher and Mr. Moulton remained together. I remember that Mr. Beecher said something—I cannot distinctly bring it to my mind at this moment—which led him into a violent outburst of grief. He sat and wept again and again, and his face assumed a very peculiar redness, in the midst of which Mr. Moulton asked me if I would retire and leave the two together alone, which I did.

Q. Did you at that time leave the house? A. Yes, Sir.

Q. Nothing further, then, occurred that day? A. Nothing further occurred that day. I am not able at this moment to say whether or not I have given you all the conversation that took place. I have a floating recollection in my mind that I have omitted something, but at present I do not distinctly recall what it is.

#### THE SECOND MEETING AT MOULTON'S.

Q. Then, if you please, we will go to the next interview, of January 7th, or about that date. Do you recollect on that day of having an interview with Mr. Beecher? A. I don't recollect precisely as to a date. I remember that after the interview which I have just narrated, either in whole or possibly only in part—a few days after that interview I was sent for by Mr. Moulton to go to his house. It was in the afternoon. He was in his parlor. He said that he had not been well enough to go out, and wanted to see me on a matter of importance. Mr. Beecher was present. The letter which I had written to Mr. Henry C. Bowen, dated the 1st of January, was under discussion. I had been sent for by Mr. Moulton—

Q. One moment. Look at "Exhibit No. 3," and see if it is the letter to which you make reference? [Handing witness "Exhibit No. 3."] A. Yes, Sir.

Q. Now you may go on. A. I had been sent for by Mr. Moulton to enter into some consultation in reference to that letter. That was the object of the interview.

Q. What occurred at the interview? A. Mr. Moulton read that letter aloud. He told Mr. Beecher that I had written it, feeling that I must make some explanation to the public for the sudden cessation of my relationship with *The Independent* and *The Brooklyn Union*. I say Mr. Moulton stated that; possibly it was I who stated that; I am not clear as to that point. At all events, either Mr. Moulton or myself—and on second thought I am rather inclined to think it was I who said that my relationships with Mr. Bowen had been suddenly terminated in a manner to excite public comment; namely, that the last copy of *The Independent*, or the one next to the last, in December, 1870, had announced to the public that I was to be no longer the editor of that paper, but its special contributor, and that I was to be five years the editor of *The Brooklyn Union*.

Mr. Evarts—Mr. Tilton, do you mean you said all this? A. I said all this as part of the explanation which I gave for my action toward that letter. I said that the announcement had been made in *The Independent*, with a great flourish of trumpets and with much eulogy and glowing reference to myself, that I was to be hereafter the editor of a daily paper and to be special contributor to *The Independent*, and that Mr. Bowen had put forth the announcement in a very complimentary manner to myself, and that the next intimation which the public had concerning me, through the press at large, was, that those contracts had been suddenly terminated; that I was not to be a contributor to *The Independent*, that I was not to be the editor of *The Brooklyn Union* for five years, and no reasons were given; and I said, that in view of that extraordinary announcement, and in view of the sudden cessation of that promised engagement, some explanation was due by me to the public to account for that event, and that the explanation which I designed to make to the public was a plain and simple recital of the exact facts narrated by Mr. Bowen in an interview with me on the 26th of December; also the exact facts that occurred in an interview between him and me two or three days after, when he grew angry and violent; also the exact facts of his terminating my engagements with

those two papers a day or two after that interview; that I felt that duty to myself required a plain statement of the facts in the case; that accordingly under that sense of duty I had written a letter to Mr. Bowen reciting all the facts; that I had written it very carefully, taking the advice of Mr. Jeremiah P. Robinson, of Mr. Moulton, of Mr. Gordon L. Ford, and that acting upon their advice, and particularly upon the advice of the oldest of those gentlemen, Mr. Robinson, I had studiously kept out of this letter all ground of difference between Mr. Beecher and myself. I had only stated in the letter the ground of difference between Mr. Bowen and myself, and I had prepared the letter and expected to publish it; that Mr. Moulton had counseled me not to publish it, and that that was the way the case then stood. My recollection is that at that point of the narrative, Mr. Moulton either said to Mr. Beecher that he had counseled me not to publish the letter, or else he said to me, "Theodore, you know that I have been opposed to the publication of this letter or to the recital to the public of any of the facts therein contained;" I cannot undertake to give all the conversation that ensued. The next point of the interview was, not as to the publication of the letter, for I yielded my acquiescence to Mr. Moulton's rather peremptory request and demand—

Mr. Evarts—Confine yourself to what you said, Mr. Tilton.

The Witness—Yes, Sir. Mr. Moulton then held a consultation with Mr. Beecher as to the contents of the letter, the point of that conversation being this, as I remember Mr. Moulton said: "Mr. Beecher, I do not want to know anything from curiosity as to the truth or falsity of the charges which Mr. Bowen makes against you; I have no wish to inquire. Mr. Bowen is a man for whom I have very little respect, and I do not want to interfere in your affairs with him any further than I can be of service to you. Tell me this, however," said Mr. Moulton, "is there anything in this letter which you are afraid to meet in case it should be published? In other words, has Mr. Bowen any rod which he can hold over you? Has he any evidence to prove either these or any similar charges, or anything against your moral character?" Mr. Beecher in reply to that said, in substance—and he spoke with much anger, and I think he took the letter in his hands and pointed to some of the statements in it—he said in substance that so far from it being true, as Mr. Bowen had alleged, that he, Mr. Beecher, had made to Mr. Bowen any confessions of adultery, that he, Mr. Beecher, had a settlement with Mr. Bowen in the previous February, that that settlement had been reduced to writing, and signed at the time, that it contained numerous items and covered the whole field of their dispute, and there was in it no reference to any such thing as adultery—that he could produce, if necessary, to Mr. Moulton, the heads of that settlement, and Mr. Moulton would see for himself that there was no accusation by Mr. Bowen against him, Mr. Beecher, of any such crime as adultery. He said, furthermore, that so far as Mr. Bowen's general charges against him were concerned—I remember that he lifted his right hand and brought it down upon his knee with a good deal of force—says he: "I am not afraid to face Bowen either here or anywhere as to any statement he may make." He

then said to Mr. Moulton, not to me, but in my presence: "Now, it may be very natural for you to suppose that, in view of such charges as these, I would deny the truth even if they were true; but in order to convince you that I do not deny the truth, I am going to admit that Mr. Bowen has pointed to a story in which there is some truth, though not as Mr. Bowen has stated it." Mr. Beecher then turned over the pages of the letter, and hunting through the pages, put his finger on a statement made in the letter to the effect that he, Beecher, had been charged by Mr. Bowen with a violent assault.

#### LAWYERS' SARCASM.

Judge Neilson—Does that relate to a third person?

Mr. Fullerton—I will stop him in a moment.

Mr. Evarts—I don't understand the right of my learned friend to stop him.

Mr. Fullerton—Well, I don't suppose my right depends on my friend's understanding of it, by any means. Whenever it becomes apparent that he is going to speak in reference to a third person, I will stop him.

Judge Neilson—[To the Witness.] I wish simply to say this, if the conversation relates to a third person you are not to name that third person.

Mr. Evarts—That direction, if your Honor please, I except to, as I did before?

Mr. Fullerton—The learned counsel is at liberty to call it out, but I won't take the responsibility of calling it out. I will say, in justice to myself, that I shall not permit, without calling your Honor's attention to it, any further relation of that story.

Mr. Evarts—The better way is to have the parts of the letter pointed out.

Mr. Fullerton—I suppose it is sufficient to say it is the same part which Mr. Moulton's attention was called to.

Mr. Evarts—The letter is before him, and he can call it out.

Mr. Fullerton—I leave that for the gentleman to do on cross-examination. [To the Witness.] Omitting that part, go on and state what else occurred during that interview, if anything did? A. Mr. Beecher said there was a peculiar malignity in Mr. Bowen's charge against him of having committed violence, because there had been no violence; there had been mutual acquiescence, that he had never committed any violence upon any woman, and God knew that he had committed no violence upon that woman.

Q. You need not go any further into that. Omit all that relates to that event, and state what else occurred in the conversation.

Mr. Evarts—I object to that construction on the part of the counsel being permitted in the taking of evidence.

Judge Neilson—It is always proper to omit part of a conversation not necessary to the question under investigation.

Mr. Evarts—It is a part of the testimony, if your Honor please, that they are giving and producing as pertinent to this investigation.

Mr. Fullerton—No; it is a part of the testimony I am not giving.

Mr. Evarts—Now, the conversation concerning the letter is a part of the evidence that they introduce as binding.



Judge Neilson—Of course it is.

Mr. Evarts—And any interruption of instruction by counsel to a witness to omit a part of the truth, in my judgment is not authorized by the rules of evidence.

Mr. Fullerton—Your Honor knows perfectly well why I omit it.

Judge Neilson—I instruct that it be omitted if it relates to a third person.

Mr. Fullerton—It does relate to a third person, and I don't desire to call it out on that account.

Mr. Evarts—All the charges relate to third persons. All the charges relate to immoralities with women.

Judge Neilson—We have nothing to do with immoralities with women.

Mr. Evarts—Then let the subject be left out and not introduce it until it becomes inconvenient and runs against contradiction; that cannot be tolerated.

Mr. Fullerton—It is inconvenient in no other respect than that it would be improper to introduce a third person into this trial when it can subserve no good purpose, but would subserve a bad purpose.

Mr. Evarts—The time to consider that is before you begin, and not when you get into the middle of it.

Judge Neilson—Let me ask Mr. Evarts if he thinks it would be incumbent upon him to omit part of a conversation, part of which may be pertinent to the issue on trial and part not—if he would be constrained to omit it all because part of it would not be properly receivable?

Mr. Evarts—I don't desire to go any further at present than to say to my learned friend that the time to consider whether he would extract any evidence from this witness on the subject of the incident referred to in that letter was before he began upon it, and not in the middle of it.

Mr. Fullerton—I don't choose to put myself in any such attitude as that. I know what use the counsel would make of it if no reference were made to that subject, and I mean to deprive him of that weapon of attack on our side.

Judge Neilson—Let that pass over.

Mr. Evarts—Now he proposes to deprive me of both weapons.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—He proposes to deprive me of the weapon of admission because he don't admit it, and he proposes to deprive me of the weapon that would destroy the statement because he don't give the whole of it.

Mr. Fullerton—I have given you an opportunity to say something which was out of place, and that will probably make up for it. The gentleman can call out that branch of the conversation, if he is disposed to take the responsibility of doing so. We will see whether he will or not.

Judge Neilson—I think those last passages ought to be struck out; they are not necessary.

Mr. Fullerton—I haven't the slightest objection to striking out the last passages in the answer of the witness, and I only want them to go so far as to enable your Honor to see what interview I refer to, so that your Honor will see the motive which prompted me to leave it out, which would commend itself to every right-minded person.

Mr. Evarts—It cannot be with our consent that they undertake to produce before this jury evidence, and then stop it, and then consent, after it has had some influence, to have it struck out. When I propose to strike out, that is on my responsibility.

Judge Neilson—Go on. Pass to another subject.

Mr. Fullerton—And what I propose to leave out is on my responsibility.

Mr. Evarts—You propose to leave out part of it.

Mr. Fullerton—I have not put it in yet, and I don't mean you shall force me to do it. [To the Witness.] Now, I call your attention to an interview. Have you given all of that interview that you remember, leaving that part of it out? A. The interview was mainly devoted to a consideration of that which must be left out. I remember that towards the close of it Mr. Beecher said that though he had assured us that he was not afraid to face Mr. Bowen, on the ground that Mr. Bowen could produce no evidence against him, yet he did not wish to have this letter published, and if I could see my way clear to a justification in some other and less dangerous way he hoped I would adopt it, for he said that the public were only too willing to believe charges against a clergyman, and that if these charges which Mr. Bowen had made should be made public, many people would believe them, whether true or false, and that in proportion as people believed in Mr. Bowen's stories against him they would be likely to believe in any accusations that might—any rumors that might be set afloat concerning himself and Elizabeth, and just in proportion as rumors should get afloat in reference to himself and Elizabeth, people would be likely to go back and believe in the charges that Mr. Bowen had brought against him; so he said, for the safety of Elizabeth, and for his own protection, he hoped that I would not print that letter, but seek some other method of vindicating myself before the public.

Q. Was that letter then published? A. No, Sir, I never published that letter.

Q. Now what else occurred there, if anything? A. I don't remember anything at this moment.

Q. Did you break up then, and separate? A. My impression is that Mr. Moulton asked me if I would retire; that was his usual method in my interviews with Mr. Beecher. I was sent for, and the interview was held, and Mr. Moulton usually had something which he wished to say.

Q. It ended in that way, did it? A. Yes, Sir.

#### THE FEARS THAT MOULTON'S SICKNESS AROUSED.

Q. Then, I wish to call your attention to another interview in the same month, between the 15th and 20th of January, between yourself and Mr. Beecher. Do you recollect such an interview? A. I recollect that very shortly after the interview which I have been adverting to, Mr. Moulton was taken seriously ill, and at the height of that illness he lay at the point of death. I went to the house one day, and the servant told me that Mr. Beecher was up stairs. I did not go up; I remained in the parlor. Pretty soon Mr. Beecher came down stairs, and, noticing through the door that I was in the parlor, came in and said, with great agitation of manner: "Frank is very sick; he is at the grave's edge. I am afraid he will die, and

if he dies, Theodore, what will then become of your case and mine?" He stood a moment, and when I made no reply, he said to me, with tears in his eyes: "Theodore, Frank has saved my life, and I would willingly, to-day, give my life to save Frank's;" and he stepped quickly forward towards me, and put both hands against my face in *this* manner (illustrating), and kissed me on the forehead, and suddenly retired from the room, and from the house.

Q. Now, do you recollect another interview with Mr. Beecher towards the close of the same month, and on or about the 28th or 29th of January; and, if so, tell us where it took place, and what it was. A. I recollect another interview with Mr. Beecher, though whether it was towards the close of that month, or in the beginning of the month following, I am unable to say. It was after Mr. Moulton had got well enough to receive guests, and to talk with us in his bed-chamber. I was sent for to that interview.

Q. And where did it take place? A. It took place in Mr. Moulton's sick room.

Q. Now, give us the interview as nearly as you recollect it. A. Perhaps I am wrong in that last answer. My impression is that Mr. Moulton was then well enough to go out of his room, and that we went into one room, and out of that into another; I won't be positive about that. The object of that interview—Mr. Evarts—What took place?

Mr. Fullerton—Yes, what took place?

#### THE MISCHIEF WORKED BY MRS. MORSE.

The Witness—I had been sent for by Mr. Moulton to come. When I arrived there Mr. Beecher was present. Mr. Moulton held in his hand a letter which Mr. Beecher had received from Mrs. Morse, Mrs. Tilton's mother. Mr. Beecher had brought that letter to Mr. Moulton, and there were some statements in that letter, concerning which I was asked to make explanation.

Now, one moment please. [Handing paper to Witness.] Look at "Exhibit No. 7," and say whether that is the letter of Mrs. Morse, of which you have just spoken? A. The letter of Mrs. Morse, which was then under discussion, had a date on the top. This seems to have no date. Still, Mr. Fullerton, I find, on looking at it, that this is the letter, though the top seems to have been cut off.

Q. That is as it has been published in the newspapers. What is the number of the Exhibit? A. Number Seven.

Q. You recognize that as the letter which was the subject of conversation then? A. Yes, Sir.

Q. Your attention was called to some particular part of it, I understand you to say? A. Yes, Sir.

Q. Now, tell us the interview? A. Mr. Moulton wanted to know whether I had told twelve persons of Mr. Beecher's criminal relationship with Mrs. Tilton; I said I had not. Mr. Moulton then said that this letter of Mrs. Morse had made that charge against me. I said: "Let me see it." So I took the letter, and I read it, and I said: "Mrs. Morse's statement that I had told twelve persons the story was as false as another statement which the letter contained, somewhere in it, I won't stop to point out exactly, namely, that I had not money

enough to buy my family food to eat." I turned to Mr. Moulton and I said, "You know well enough how false that statement is;" and I turned to Mr. Beecher, and I said, "Moulton understands well enough how false that statement is, because his firm are my bankers, and I have several thousand dollars there on deposit, now; I don't know how much." Mr. Moulton said he had already made that statement to Mr. Beecher; that he knew that one statement in this letter was false, namely, about my lack of money, and that he believed the other was false, namely, that I had told twelve persons. Mr. Beecher then asked me what persons I had told. I told him I had told some persons. I then said that after Mrs. Tilton had made her confession to me in July, 1870, that I had shortly after that informed Oliver Johnson and Mrs. Martha Bradshaw; that during the Summer I had informed no other person, but I told him possibly twelve did know of that fact. I said that shortly after Mr. Johnson and Mrs. Bradshaw were informed. Mrs. Tilton had informed her mother, Mrs. Morse. I said, furthermore, that during the Summer Mrs. Tilton's brother, Mr. Joseph H. Richards, had come to me one day, and asked me whether or not I had noticed Mr. Beecher's visits to my house, and whether I was quite sure that they were altogether of a pastoral character. I told Mr. Beecher, also, that Mrs. Morse, on hearing the story from Mrs. Tilton, had communicated it to Mr. Richards, and that I believed Mr. Richards had informed his wife. I told him, also, that Mrs. Morse was propagating the story in this way, namely, that she was saying among her family and relatives that Theodore made such and such charges against Elizabeth, and that her method of denouncing me for making such charges was a very fatal way of propagating the charges themselves. I told him that Mr. Moulton had informed his two partners, as necessary adjuncts to his own mind, in their consultations, and that so far as any other persons knowing about the tale, that intelligence must have been received through Mrs. Morse's very free communications, in the manner in which I have described. I told him that the only persons whom I had ever informed were Oliver Johnson, Martha A. Bradshaw, and Francis D. Moulton. Some other letters were there produced besides this one.

Q. [Handing paper to Witness.] In that connection I hand you a paper, and ask you whether that was produced at that time? A. Yes, Sir.

Q. Who produced it? A. This letter was present at that time. I am unable to say whether Mr. Moulton produced it to Mr. Beecher. The letter was there.

Q. State whether it was the subject of conversation? A. Yes, Sir.

Q. What was said in regard to it? A. I was asked whether or not I had made the charge which that letter contained.

Mr. Evarts—Wait one moment.

The Witness—I beg your pardon.

Mr. Fullerton—I don't offer it in evidence yet. I ask those questions preparatory to making the offer.

Mr. Evarts—I don't see that this letter affects me.

Mr. Fullerton—Then I will try and make it affect you. [To the Witness.]

Mr. Fullerton—What was said in reference to this letter? A.



I don't know who brought that letter to that interview. I was sent for to be present at the interview, and letters were there brought me.

Q. What did Mr. Beecher say in regard to that letter? A. Mr. Beecher asked me whether or not I had ever said that he preached to forty of his mistresses, the allusion being to a statement contained in that letter. I told him that during the Summer I had very frequently made remarks to his detriment, that I had not spared him; but whether or not I had made that identical remark, I could not say. I called his attention to the fact that that letter was simply a copy of the letter which Mrs. Tilton had written to me during the Summer or the Fall, and that it was before I had received from him his letter which is now known as the letter of contrition, and before Mr. Moulton had undertaken to keep the peace between us. I told him I had made no such statement since the time of that letter, and that I could not say whether I had used such expressions as that letter contained, but I would not deny having spoken severely against him to some friends in the Summer.

Q. Did Mr. Beecher say in that conversation where he got that letter?

Mr. Evarts—He has not said that he had it.

Mr. Fullerton—He can say whether he had it or not.

Mr. Evarts—You have no right to assume anything.

Mr. Fullerton—No, I don't assume anything; I merely ask that question, whether Mr. Beecher said he had that letter.

Judge Neilson—Ask him where it came from.

Mr. Evarts—If your Honor please, it assumes something, and it is not necessary to lead the witness, either.

Mr. Fullerton—Then, I will put the question as your Honor suggests. All I care for is the fact; I do not care what particular question is put to elicit it. [To the Witness.] What was said, if anything, about the origin of that letter? A. I do not know that anything was said about the origin of the letter. The point of the conversation was the contents of the letter, and the fact that Mrs. Morse had been writing such things. And I remember asking Mr. Beecher whether or not he had among his papers any other letter of Mrs. Morse's, which, being opened by his wife, or by any other person, might give unconscious evidence against himself and Mrs. Tilton, and he said "No." I told him Mrs. Morse was a very dangerous woman, and that if she was in the habit of writing to him, he might expect letters from her at any time; that I had received letters from her threatening my life; that I had received letters from her threatening me with personal violence, and that I had received letters against my sanity, and letters describing me as a drunkard and a brute, and letters of various kinds; and she might take a sudden turn of mind and write him letters. I told him that Mrs. Morse had very freely spoken of the case in certain moods of her mind, not at all concealing but rather revealing her daughter's guilt; and that if he encouraged letter writing to him by Mrs. Morse, she would be likely on any occasion to send him a letter which, if the wrong person opened it, would let out the whole story.

Q. What else occurred there? A. I told Mr. Moulton, or

both, that this letter—I don't now refer to the letter lying before you, but the letter which was dated January 28th, and which was made the origin of the interview, Jan. 27th—I told him that that letter should be answered; that, owing to Mrs. Morse's peculiar temperament, if he did not answer it, if he treated it with neglect, if he allowed it to go unnoticed, she might take offense and strike him and Elizabeth some unexpected blow. I told him that I had a long experience with Mrs. Morse and that she was a woman amenable to courtesy and kindness; but that if she took offense, she was very reckless in her conduct and utterances, and that for the safety of Elizabeth it would be necessary that Mrs. Morse should be dealt with in a very kindly way; and I recommended that the answer to that letter should be one which would convey to her a sense of Mr. Beecher's kindly feeling; and, also, that it should be such a letter as that Mrs. Morse, in some other mood of mind, could not possibly use to Elizabeth's detriment.

#### MRS. TILTON'S LETTER OF REMORSE TO HER MOTHER EXCLUDED.

Q. State whether the letter which it was proposed should be sent as a reply to Mrs. Morse was prepared at that time? A. A letter was prepared by Mr. Beecher in reply to that, and I have seen the manuscript of it; it is in evidence. I will not say—I cannot absolutely swear—that he wrote the reply on the spot; but I am very distinct in my recollection of this point, namely, that the spirit and the substance of that reply were agreed upon at that interview; whether the actual draft of the reply was then made, I have forgotten.

Q. Look at "Exhibit 8," and see whether that is the letter to which you refer? A. If this is correctly printed, it is the one to which I refer.

Q. Do you recollect anything else that occurred in that interview? A. Yes, Sir; during that interview I took out from my pocket and exhibited a letter which Mrs. Morse had addressed to Mr. Bowen; it was a little trifle; an anonymous letter she had sent to *The Brooklyn Union*, and which a young gentleman connected with that paper had sent to me. I do not know whether it is in evidence; the substance of it is this—

Q. You need not state what it was unless you read it there. A. I did; I read it as an instance of the peculiar kind of correspondence to which she was addicted.

Q. Pass over that, and state whether there was anything else in that interview which you remember. A. Nothing occurs to me at this time.

Q. This letter which I have shown you, which you say was there at that interview, in whose hands did you first see it? A. It is in Elizabeth's hand.

Q. No, not that; in whose hands did you see it at that interview; in Mr. Moulton's or Mr. Beecher's? A. I cannot say; two or three letters were there; this letter and a letter dated Jan. 28th; and my recollection is that there were one or two others that Mrs. Morse had written, but I will not be positive as to that.

Q. Was anything said by Mr. Beecher in regard to any parts

of this letter? A. If you hand me the letter a moment, I will endeavor to refresh my mind.

Q. Look over it and see [handing the letter]. A. He asked me what I understood to be the state of Elizabeth's mind and heart; how she bore her burden; whether or not she could survive under the weight of the calamity that had fallen upon her. He asked me some very sympathizing questions, Sir, about that; I think perhaps they had better be omitted.

Mr. Fullerton—If your Honor please, we offer that letter in evidence.

Mr. Evarts—I am at a loss to see on what ground. If your Honor please, this is a letter from Mrs. Tilton to Mrs. Morse—between third parties—and how it is evidence, I do not understand. They have given a conversation concerning one statement in it (that is, if there is such a statement in it). It is assumed that there is something there which introduces the idea of Mr. Tilton having asserted that Mr. Beecher preached to forty of his mistresses every Sunday, and the witness has testified about that. We cannot remember the identical expression; but he said something of that spirit during the Summer; and in regard to that, the conversation is legitimate; but the fact that there was a letter presented that suggested a topic of conversation, certainly does not give them the right to read a long letter between other parties. The letter was not the subject of discussion; but this matter, whether Mr. Tilton had said that he preached to forty of his mistresses, was the subject under discussion. Now, the fact that here is a letter which was talked about, certainly does not give them the right to read it.

Mr. Beach—It is offered on the same ground upon which we offered all the papers produced in evidence, that they were brought to the attention and observation of Mr. Beecher, and were known to him. Mr. Tilton was sent for, and found Mr. Beecher and Mr. Moulton in consultation over this letter and others, and one particular passage, referring particularly to Mr. Tilton, is presented to his mind,—and he is asked whether or not he made that statement. But the whole letter was before Mr. Moulton and Mr. Beecher, before Mr. Tilton was called to the conference.

Mr. Evarts—How does that give you the right to put it in evidence?

Mr. Beach—How does it give us the right! We find the letter in the possession of Mr. Beecher, and under his observation.

Mr. Evarts—Suppose it was here in our hands, as his counsel, having been in his hands for six months.

Mr. Beach—That would be a privileged communication between counsel and client.

Mr. Evarts—If this very letter had been in Mr. Beecher's hands for six months, and then put into our hands as counsel, would that give you the right to read a letter between third persons, because one party of the suit has got it in his hands?

Mr. Beach—Certainly, if it was the subject of consultation between Mr. Beecher and others, and the reply to be made to it; if there was anything in the letter which relates to the subject of litigation or this difficulty between the parties, it is competent.

Mr. Evarts—My learned friend is in confusion. This letter

was not the subject of consultation; it was the other letter which was made the reply.

Mr. Beach—I am not in confusion. This letter was present, and the habits of Mrs. Morse and the necessity of making some reply and the subject matter of this letter were subjects of consultation, as between Mr. Beecher and the others.

Judge Neilson—The letter of Mrs. Morse and the reply are both in.

Mr. Beach—I know that.

Mr. Evarts—But that was a letter to Mr. Beecher.

Mr. Beach—It was. What matter? If it was a letter before him, the contents or statements of which he was called upon to deny; if the subject of the letter was matter of consultation between them, so far as it was the subject matter of consultation, the letter is in evidence.

Judge Neilson—I don't think that what was said in regard to the letter is sufficient to justify us in receiving it. I think I will have to rule it out.

#### BEECHER'S LATER LETTERS TO MRS. TILTON.

Mr. Fullerton—I shall call your attention to the 7th of February. Do you recollect meeting Mr. Beecher on that day? A. No, Sir; I do not.

Q. Do you recollect of having written a letter to Mr. Moulton about that date? A. Yes, Sir.

Q. Look at that paper, and say whether it is the letter. It is the 7th of February, and is marked "Exhibit No. 9." Is that the letter you wrote on that date? A. Yes, Sir.

Q. Did you see Mr. Beecher soon after writing that letter? A. I saw Mr. Beecher about that time, once or twice, at Mr. Moulton's house.

Q. Do you remember what occurred on those occasions? A. He thanked me for writing this letter.

Q. What did he say in regard to this "Exhibit No. 9?"

Mr. Evarts—After he received it?

Mr. Fullerton—Yes, after he received it. A. I do not remember the particular phraseology in which he expressed himself.

Q. Give the substance of it? A. He spoke to me about having seen the letter, and thanked me for writing it.

Q. Were you the bearer of a letter, about that date, to Mrs. Tilton, from Mr. Beecher? A. Yes, Sir; I was the bearer of two letters; I was the bearer of a letter which Mr. Beecher wrote to Mrs. Tilton, and as Mr. Beecher had at the same time, or about the same time, written a letter to Mr. Moulton, in which he referred to Mrs. Tilton and myself, I was allowed by Mr. Moulton to bear that letter to Mrs. Tilton, and I showed her the two, and then returned both to Mr. Moulton.

Q. Look at "Exhibit 10," and say whether that is the letter which Mr. Beecher wrote to Mr. Moulton, and which you showed to Mrs. Tilton? A. Yes, Sir; that is the letter.

Q. Now look at "Exhibit No. 11," and say whether it is the letter written by Mr. Beecher to Mrs. Tilton, and which you were the bearer of at the same time you showed "Exhibit 10?" A. Yes, Sir; this is the letter.

Mr. Evarts—The letter of Mr. Beecher to Mrs. Tilton is in



evidence; but the fact of showing Mr. Moulton's letter to Mr. Beecher is no act of Mr. Beecher.

Mr. Fullerton—We do not give that.

Mr. Evarts—We object to that evidence.

Mr. Fullerton—The letter is in evidence.

Mr. Evarts—It is, and has been for some weeks.

Mr. Fullerton—It is not outlaid.

Mr. Evarts—But the fact of your witness taking Mr. Moulton's letters to Mr. Beecher is not the act of Mr. Beecher.

Mr. Fullerton—I have not pretended that that was the act of Mr. Beecher.

Judge Neilson—That letter was taken without Mr. Beecher's authority.

Mr. Evarts—The taking of that letter of Mr. Beecher to Mr. Moulton to Mrs. Tilton is not evidence. Whether it is of any importance I do not know.

Mr. Fullerton—Then, if you do not know whether it is of any importance, you should not object.

Mr. Evarts—I do not know whether you regard it of importance or not, but I think it is objectionable.

Mr. Fullerton—If you object to everything that I think important, you will be objecting a good while.

Mr. Evarts—I do not object to it because you think it important, but because it is illegal.

Mr. Fullerton—I have shown, if your Honor please, that the letter was carried by Mr. Tilton to his wife, and shown to her. That is an act; there is no communication connected with it. If I do not make any further use of that fact in this case hereafter, it will go for nothing.

Judge Neilson—It will be very harmless; we will let it stand for the present.

Mr. Fullerton—Unless I connect it.

Judge Neilson—Yes; but still the counsel had a right to call attention to it.

Mr. Evarts—When you connect it properly that will be another thing.

Mr. Fullerton—I cannot prove two things at once.

Mr. Fullerton—Do you recollect whether it was on the 7th of February that you were the bearer of this letter? A. No, Sir. I should not swear at all as to the date, except so far as the letters themselves bear date; the dates are on the letters, and not in my mind at all.

Q. You can state whether you were the bearer of this letter on the day it bears date? A. No, Sir; but about that time; I should say, perhaps the day after—a day or two after.

Q. When did you next see Mr. Beecher after you were the bearer of these two letters? A. I think my next interview with Mr. Beecher after that was just before Mr. Moulton was getting ready to go to the South; I sent for him to come to my house.

Q. Before going to that interview, I propose to ask you, did you learn from Mr. Beecher why you were made the bearer of that letter from himself to Elizabeth? A. Mr. Beecher, whenever he met me, and particularly at that time, always asked after Elizabeth—asked for her state of mind; asked whether or not she could endure to live; asked whether or not I was restoring her in any degree to my respect; he put such questions as these, if that is an answer to your inquiry.

Mr. Fullerton—Yes.

The Witness—And he wanted me to be assured that Mr. Moulton, who was endeavoring to keep peace between us all, held her in kindly regard, and did not frown upon her because she had forfeited her honor; he was very anxious that Elizabeth should be assured of that fact.

Q. What was said, if anything, about the writing of this letter? A. He told me also that he wanted her to know that I had acted towards him in an honorable way. If you will permit me to say, Mr. Fullerton, that Mr. Beecher at that time dropped numerous expressions to me of profuse gratitude, which I feel I cannot, consistently with my proper sense of self-respect and pride, utter here. It was burdensome to me at the time, and it will be disagreeable to me to state it.

Q. Was it in consequence of anything he said to you that you were the bearer of this letter, dated February—the letter to Mrs. Tilton? A. Let me see if I understand the question?

Q. Was it in consequence of anything that occurred in that interview that you became the bearer of the letter dated Feb. 7th, from Mr. Beecher to Mrs. Tilton? A. If you let me see the letter again.

Q. It is this expression, "This is sent with Theodore's consent, but he has not read it. Will you return it to me by his hands?" A. Ah! Mr. Moulton asked me if I would permit Mr. Beecher to write a letter to Elizabeth, and I told Mr. Moulton that he must act in that matter as he saw fit; that I should neither give nor withhold my permission; that my wife was a free agent, as I was; that I would neither accept from her permission or denial, and that I would not accord to her permission or denial; that she had a sovereign right to receive letters, and that Mr. Moulton himself should be the dictator in the matter as to whether any letter should be sent; Mr. Moulton then said to me: "I will construe that as a permission on your part."

Q. From whom did you receive this letter? A. This letter? I received this letter from Mr. Moulton's hand, I think; possibly from Mr. Beecher's; I will not be certain.

Q. By whom was it returned, if you know? A. From Mrs. Tilton?

Q. Yes. A. It was returned by me; I carried it to Mrs. Tilton and she read it; at the same time also I carried the other letter which Mr. Beecher wrote to Mr. Moulton.

Q. And to whom did you return that letter? A. To Mr. Moulton; I did so because the letter itself requested its return.

Mr. Fullerton—If your Honor please, the next interview to which I shall call the witness's attention, is a lengthy one, and I shall not be able to complete it to-night. As it is within four minutes of the hour of adjournment, I propose that we adjourn.

Judge Neilson—The Court will now adjourn. The jurors will be in their places promptly at 11 o'clock to-morrow.

The Court was then adjourned until 11 o'clock on Tuesday morning.

## SEVENTEENTH DAY'S PROCEEDINGS.

## MR. TILTON'S SECOND DAY.

EXPLANATION OF THE PLAINTIFF'S RELATIONS TO  
MRS. WOODHULL — THE BOWEN ARBITRATION  
PROCEEDINGS—THE TRIPARTITE COVENANT—MR.  
TILTON'S NARRATIVE PROLONGED — ATTENTIVE  
LISTENERS TO THE TESTIMONY.

The trial dragged on Tuesday. Mr. Tilton ascended the witness stand at exactly 11 o'clock, and took up the thread of the story where it had been dropped the night before. He began with the narration of an interview in February, 1872, when Mr. Beecher, according to the witness, went to Mr. Tilton's house, and conversed in relation to the supposed shadow over the life of the boy Ralph. Mr. Tilton says that Mr. Beecher positively assured him that there was no shadow, and the interview closed amicably. The plaintiff described fully his relations to Mrs. Woodhull from the beginning of his acquaintance with her, soon after the publication of *The World* article, until their friendship was broken through disagreement. Mr. Moulton's statement that the woman was dangerous, and his advice that she be dealt gently with, was explained. The full story of the composition and revision of Mrs. Woodhull's biography was made public for the first time. Mr. Tilton says that the woman's husband wrote it; she brought it to him, and asked him to rewrite it. He did so, leaving out many extravagant statements, but Mrs. Woodhull was dissatisfied. She wanted him to put in the incident of her raising a child from the dead. "Without that incident," she said, "the book would be the play of Hamlet with Hamlet left out." She also wanted it written that Demosthenes communicated to the world through her. The circumstances which led Mr. Tilton to preside at the Steinway Hall meeting were narrated, and the witness stated that the direct cause of his doing so was that Mrs. Woodhull was going on the stage alone, saying that there was no man brave enough to go there with her. Mr. Tilton evidently does not now court the friendship of Mrs. Woodhull, for he incidentally referred to her lecture on "Finance" as harmless and stupid. Much of the testimony tended to excuse Mr. Tilton's connection with Mrs. Woodhull, and in concluding his evidence regarding her the witness turned sharply upon the jury, and said: "I say before God that Mr. Beecher is as much to blame for my connection with Mrs. Woodhull as I am myself."

The wearisome story of the arbitration proceedings between Mr. Bowen and Mr. Tilton was repeated, and Mr. Fullerton read effectively the article of Mr. Beecher in *The Christian Union* published about that time, in which Mr. Tilton was referred to as a brilliant young writer and orator. The reading of the note seemed to affect Mr. Tilton, for he closed his eyes and the tears rolled down his cheeks. Mr. Tilton next explained the circumstances of his membership in Plymouth Church, and why he severed the connection.

After the recess the various interviews and complications of 1872 were described. Letters and cards published and not published, conversations, interviews, covenants, etc., were given entire or in fragments, or merely referred to. At the meeting held late in 1872, at which Messrs. Moulton, Woodruff, Tracy, and Tilton and Mr. Beecher were present, Mr. Tracy was represented as promising Mr. Tilton "as a gentleman and a lawyer" that he would not appear for Mr. Beecher in case litigation arose between the latter and Mr. Tilton. A new document was added to the scandal literature in the form of a card written by Mr. Beecher denying in emphatic terms the crime of which he had been accused. Mr. Tilton said that the card was satisfactory to Mr. Moulton, Mrs. Tilton, and himself, but Mr. Beecher, for some reason, did not publish it. The time of the publication of the tripartite agreement on Decoration Day, in 1873, was at length reached, and Mr. Tilton said that he had nothing to do with having it printed. That publication was followed by the printing of a card by Mr. Beecher, in *The Brooklyn Eagle*, mentioning Mr. Tilton in connection with his accusers. Mr. Tilton then, he says, wrote a card vindicating himself, and signed Mr. Beecher's name. He sent it to the Plymouth pastor, and it was also published. About this time, in June, 1873, according to the witness, there was a stormy interview between himself and Mr. Moulton, after he had learned that Mr. Beecher had expressed an intention to resign from Plymouth Church. Mr. Tilton said he was very angry, and told Mr. Moulton that if Mr. Beecher resigned at that time, thus reflecting on the children of the witness, he (Tilton) would shoot Mr. Beecher. The charges of Mr. West against Mr. Tilton, as a member of Plymouth Church, for slandering the pastor, were very fully reviewed, and occupied nearly all of the last hour of the day's proceedings. In connection with that subject a letter written by Mr. Tilton to Sam-



uel E. Belcher, a member of the Examining Committee, just before the meeting of the Church was held at which Mr. Tilton's name was dropped from the rolls, was introduced and read. In this Mr. Tilton wrote that he had "not accused Mr. Beecher falsely." Immediately after this part of the examination had been concluded, Mr. Fullerton laughingly remarked that a motion to adjourn was always in order, and as it was then several minutes after four, Judge Neilson ended the day's proceedings.

### FACES IN THE COURT-ROOM.

The novelty of the trial appears to be about exhausted for the jurors. Most of them seem to accept fully the idea that they are to listen to the evidence and the ruling of the court without attending to anything else. The foreman, Mr. Carpenter, gives them a good example, as he sits in his chair close by the witness with his body turned so that he can look full in the face of the speaker. This watchfulness he keeps up during the entire day with an unchanging expression of interest. His face, against which he sometimes holds the ivory handle of his cane, is always grave. Upon it neither the dry wit of the judge nor the humor of the lawyers provokes a smile. The rest of the jury imitate their foreman in turning to the witness, but several of them do not appear to be so intensely interested in the proceedings, and during the afternoon session on Tuesday it was observed that one of the jurors on the front seat had his eyes closed. His attitude quickly changed, however, and his eye brightened when Mr. Fullerton said that a motion to adjourn was always in order. The rest of the jury leave the court with the air of men who have had hard work in attending for four hours to the great trial.

Mr. and Mrs. Beecher occupied their regular places during both sessions on Tuesday. The contrast between the bearing of Mr. Beecher and that of his wife was very marked. His attitude throughout the day was unchanged by anything either in the testimony or the disputes of the lawyers. His face was very calm and was almost constantly turned to the witness chair with an expression of quiet interest. His note-book was in his lap, but he did not make much use of it. It seemed to be his desire that he should not be conspicuous either to the spectators or the jury. Mrs. Beecher, on the contrary, was almost demonstrative in her expression of concern in everything pertaining to the trial.

### THE PLAINTIFF AND THE LAWYERS.

Mr. Tilton's bearing on the witness stand was such on Tuesday that it leaves no doubt that he was nervous on the first day of his examination. The flurried and somewhat awkward manner exhibited on Monday gave place to coolness and ease during the last two hours of Tuesday's session, though his confidence is very different from that shown by Mr. Moulton. The latter's replies were short and crisp; Mr. Tilton's are longer and fuller, but he talks slowly and with great earnestness. Mr. Moulton rested easily back in his chair; Mr. Tilton half rises with interest and emphasizes his words with movements of his head. Mr. Moulton seemed candid and familiar; Mr. Tilton is comparatively distant and dignified.

A day seldom passes that Mr. Evarts does not perpetrate some dry joke, which generally has the effect of disturbing the person at whom it is pointed and causing a laugh among those who observe it. Mr. Tilton, in speaking on Tuesday of a certain interview with Mr. Beecher, said that he was writing at the time; "using such an inkstand as that," he added, pointing to the lawyers' table. "This one?" asked Mr. Evarts, rising and placing his hand upon an inkstand. "No; that one," rejoined Mr. Tilton, pointing to another. "Oh! that one," said Mr. Evarts, touching another one. It was not that one, but Mr. Evarts seemed determined to discover the inkstand which resembled that which the witness had used, and he continued his questioning until he did so. It served as a satire upon the extreme minuteness with which Mr. Tilton details incidents.

### THE PROCEEDINGS—VERBATIM.

#### A CURIOUS INCIDENT.

The Court met at 11 a. m., pursuant to adjournment.

While the Clerk was calling the list of jurors, the Count Johannes addressed the Court: "May it please your Honor—" Judge Neilson—We do not pursue that practice.

The Clerk then finished the calling of the jury.

Count Johannes—May it please your Honor, I am a counselor of this Court, and I claim the privilege of addressing your Honor. In my absence yesterday my brother Evarts, who is my friend, quoted from a Massachusetts Report in reference to me, and, as published by the press, most injurious; and I believe it to be simply what took place. I do not believe there was any intention on the part of my brother Evarts to injure me. I have the honor of the acquaintance of the counsel on both sides. In Massachusetts I was approaching for marriage with a lady, and a revered gentleman interposed a letter of libel upon me and

destroyed five visits to that lady [laughter] important; and on the day before the marriage in generosity I burned that letter; and on the next day after my marriage he wrote another letter. I brought my action, and for those five visits lost, the jury gave me one hundred dollars for each, for I have power of language as well as Henry Ward Beecher, and one hour with a lady is equal to three months with mere clods of humanity. [Loud and long laughter.]

Judge Neilson—That will do.

Count Johannes—I wish to vindicate myself. I see Judge Porter there in melancholy thought, and I know that he will upon every occasion do me justice.

Judge Neilson—Will the audience keep silent. I hope the audience will pay sufficient regard to this. The citation made by Mr. Evarts was from an authority; the citation was made correctly as stated in that authority, and I am very happy that there is no ground of complaint.

Count Johannes—Not the slightest, only that Allen, the reporter, was my enemy, and he did not report what was right. I say with Shakespeare, then, "I'll have no more reports." I am much obliged to your Honor. [Laughter.]

#### MR. TILTON DEMANDS THE TRUTH.

Theodore Tilton was then recalled, and the direct examination continued.

Mr. Fullerton—Mr. Tilton, I had, at the close of the session yesterday, followed this case down to February 7, 1871. I believe we concluded that interview. Do you recollect when you next saw and had an interview with Mr. Beecher? A. Yes, Sir.

Q. When did it take place? A. It took place shortly after that time.

Q. And where? A. At my house.

Q. Can you give us the date exactly of that interview? A. I have no means of identifying the date other than that it was shortly after the writing of those three letters, all of which bear date of February 7.

Q. You refer to the letters to which your attention was called yesterday, I suppose? A. Yes, Sir; at the close of the examination.

Q. You may now state what occurred at that interview. The jury will hear you more distinctly if you look towards them? A. Mr. Beecher came to my house one morning, about the first or second week, probably the second week—yes, certainly, the second week in February, 1871. He had come in pursuance of a request which I had sent to him through Mr. Moulton. I had told Mr. Moulton that I wanted to see Mr. Beecher at my house. Mr. Beecher came in the morning, while I was at breakfast. I rose from the table, met him in the parlor, and told him to go up stairs into my study. He immediately went up, and I followed him. I closed the door behind me, and after he took his seat I said to him: "I have called you hither, Sir, in order that you may remove, if you can, a shadow from the future life of the little boy, Ralph. His mother has assigned to me a date at which your criminal intimacy with her begun. This little boy was born a few months after that. If the date which his mother has given is correct, it will save a dishonor attaching to his name. I want you to tell me, as before God, whether or not

that date is right. I want, if possible, to shield him, but I want more than that to know the truth. Tell me the truth." And he told me, on his word of honor, as before God, that the date which Mrs. Tilton had assigned was the correct date. At that moment Mrs. Tilton herself, who had followed me up stairs, came into the room, and when I stated to her the point of conversation, she burst into tears, and asseverated, as she had once or twice done before, that the date which she had given was correct.

Mr. Evarts—If your Honor please, I ask to strike out, "as she had once or twice before done." That is no part of the conversation, and the wife's statements are not to be given in evidence.

Judge Neilson—It may be stricken out.

Mr. Fullerton—One moment. If I understood the witness correctly, it was what Mrs. Tilton said upon that occasion.

Judge Neilson—It is simply the phrase, "as she had done once or twice before."

Mr. Fullerton—But it is what she said upon that occasion.

Judge Neilson—No.

Mr. Fullerton—Please read, Mr. Reporter?

THE TRIBUNE stenographer read the passage referred to as follows: "and asseverated, as she had once or twice done before, that the date she had given was correct."

Judge Neilson—The phrase, "once or twice before," does not strengthen your evidence.

Mr. Evarts—No matter whether it strengthens it or not, it is within the rule.

Mr. Fullerton—It is not within the rule. It is not within the rule laid down by this or any other Court, that I ever heard of.

Judge Neilson—I think we will strike it out.

Mr. Fullerton—I suppose your Honor strikes it out because it relates to a prior conversation between herself and her husband?

Judge Neilson—Yes, Sir.

Mr. Fullerton—Not because she did not say it on that occasion?

Mr. Evarts—She did not say it on that occasion. According to his statement he interpolates in narrating what she did say, a confirmation of some previous statement that she had made.

Judge Neilson—It is stricken out simply because it is a previous statement.

Mr. Evarts—The objection to the other conversation is covered by my previous exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton—Now, Mr. Tilton, state whether in that conversation that morning in your study the date was named, and, if so, who named it?

Mr. Evarts—I think we should have what was said, Sir.

Judge Neilson—Yes, first exhaust according to his recollection what was said, and then call his attention to anything he has omitted.

Mr. Fullerton—Very well. If such be the case we will do that.

The Witness—Mr. Beecher asked me what date Elizabeth had named. I told him Elizabeth had named as the date at which their criminal intimacy began, Oct. 10th, 1868. He replied



that he had no faculty for dates and had made no record, but he believed in his soul that she had told me the truth. He said a few other things on that occasion which I trust I shall not be requested to reproduce here, since a proper delicacy would forbid their utterance.

Q. I shall not ask for them. Omitting those things to which you have now made allusion, state what else took place upon that occasion.

Mr. Evarts—If there are parts to be omitted they should not be characterized.

Judge Neilson—That is so.

Mr. Evarts—We do not like to have characterization and then omission from delicacy. If the parts are to be omitted, let there be silence about them.

The Witness—I will—

Mr. Fullerton—Never mind, Mr. Tilton. Let it stand just as it is.

Judge Neilson—The witness had in mind, no doubt, the statement that he was omitting, and he took that form of expression.

Mr. Evarts—I am not criticising the witness.

Mr. Fullerton—It was very proper for the witness, being asked to give the whole interview, to say that he had omitted parts, and to give a reason why he omitted them. [To the Witness.] Omitting, then, that part of the interview to which you have made reference, state what else occurred at that interview? A. Some remarks were made which I cannot exactly recall that fell from Mr. Beecher's lips, expressing grief and misery, and he burst into tears. That was the actual remainder of the interview. He left and went to Mr. Moulton's house, and in the afternoon of the same day sent me a message, through Mr. Moulton, assuring me—

Mr. Evarts—No matter.

Mr. Fullerton—Never mind that.

Judge Neilson—Well, he sent you a message through Mr. Moulton? A. Yes, Sir.

Mr. Fullerton—How long did that interview last? A. Ten or fifteen minutes.

Q. Did Mr. Beecher say where he was going when he left? A. He did not; the only information I had as to where he did go was from Mr. Moulton's statement made to me during the afternoon that Mr. Beecher had visited him and left a message for him.

#### MRS. WOODHULL'S UNWELCOME SUMMONS.

Q. I pass over, then, to the publication of Mrs. Woodhull's card in *The New-York World*; do you recollect about when that occurred? A. Yes, Sir; perfectly well.

Q. State if you had any interview with Mr. Beecher in reference to it? A. I did, Sir.

Q. And where did it take place? A. It took place at Mr. Moulton's house.

Q. And in whose presence? A. Mr. Moulton's presence.

Q. Please state what occurred on that occasion? A. I told Mr. Beecher that after the appearance of Mrs. Woodhull's card of May 23d, 1871, she had sent to the office of *The Golden Age* a message that she desired to see me; that she had also come

herself to the office and left in person a communication with my office editor that she desired to see me; that I went down to see her at her office, she being then a stranger to me; that on reaching her office she put into my hand a copy there of *The World* of the date of that day, and she asked me, pointing out a card which she had signed and which was there printed—she asked me to read it. I began to read it. She said: "I wish you would read it aloud." I then read the remainder of it which I had not already read to myself, I read the remainder of it aloud, including a statement to the effect that she knew that a public teacher in a neighboring city was living in concubinage with the wife of another public teacher in the same city, and that she meant to expose that relationship, and that she would do so regardless of the consequences and fearlessness of libel suits. I told him that I had read it with a shudder and that as soon as I had finished the reading of it and laid down the paper she turned upon me and asked: "Do you know, Sir, to whom I refer in that card?" I said to him that I replied in a cavalier way: "How can I tell, to whom you refer in a blind card like this?" I told him that she had then said: "I refer, Sir, to the Rev. Henry Ward Beecher and your wife." I told him that this announcement filled me with astonishment, and that Mrs. Woodhull instantly said to me: "I read, Sir, by the expression on your face that my charge is true." I told him that I could not remember in what words I had met and endeavored to throw off her accusation; that she instantly followed it with a recital in vehement terms, in most excited manner, of a dozen or twenty particulars, extravagant and violent, all of which, or a portion of it, she afterward gathered together in the card of November the 2d, 1872.

Mr. Evarts—You didn't tell him that? A. No, Sir; I was explaining to the jury; I cannot remember all the particulars which she recited to me, only I remember that after they were printed that that brought it to my mind. The substance of the story which she told me was that there had been a criminal relationship between Mr. Beecher and Mrs. Tilton; that Mrs. Tilton had confessed it on her door steps, I believe, to Mrs. Davis, of Providence, and to other persons, and that when I had received the intelligence from her, I had used some violence upon her; that I had taken her down to Greenwood Cemetery, and in the presence of the graves of her children, stripped her hand of the wedding ring which I had once put there, and had trampled it with my heel into the sod of the grave of one of her children; that I had become a drunkard in consequence of that calamity, and had on numerous occasions struck my wife; that I had kicked her during pregnancy; that I had in every way vilified and abused her; that I had brought this crime to the attention of Mr. Beecher through Mr. Moulton, and that he had gone down—he, Mr. Moulton, had gone down—to Mr. Beecher and with a pistol pointed at his head or breast had demanded back some papers at the peril of his life. She went on in that strain. I will not undertake to give all the particulars, but as I said before I may repeat that I saw them afterwards gathered together in the article of Nov. 2d, 1872. I told Mr. Beecher that I had left Mrs. Woodhull to go to Mr. Moulton; that I had informed Mr. Moulton briefly and hurriedly of that strange interview; that Mr. Moulton had instantly said the

woman must be crazy; she must be dealt with; I must see her. I told Mr. Beecher that in pursuance of that determination by Mr. Moulton he and I took a carriage I believe that very night, at all events a night or two afterwards, but very near that time, and we drove to Mrs. Woodhull's house; I told Mr. Beecher that we there—we, that is, Moulton and I—had had an interview with Mrs. Woodhull; that during this interview she occupied our attention not with the story, except in very slight part, but mainly with an extravagant account of her views of spiritualism; that she had stood in the middle of the floor, and had built a kind of ladder with her hands between the earth and the heavens, on which she said the angels ascended and descended; that there was communication between the two worlds; that she had referred slightly to my interview and to the scandal, and that Mr. Moulton had said to her that it was wrong for anybody to be vindictive, wrong for any woman to speak ill of another, and that she had only to go to Brooklyn to see Mrs. Tilton, and she would find in her delicate and gentle manners and life an entire refutation of any such cruel story. I told Mr. Beecher that Mr. Moulton and I, on coming away that night, had discussed in the carriage how we should get along with Mrs. Woodhull; that Mr. Moulton expressed on that occasion his full conviction that the woman was not in her right mind, and that she must be dealt with as a dangerous person and by kindness, and I told him that if he had any suggestions in the matter as to how we should meet this new danger, confront this new enemy, I wanted to hear them; and it was in that way that Mr. Beecher and Mr. Moulton and I came into consultation as to how to treat with Mrs. Woodhull, and to deal with her threats to expose the secret between Mr. Beecher and Mrs. Tilton. From that time onward, for four or five months, Mr. Moulton, Mr. Beecher and I were in occasional consultation as to how to meet the dangers which were likely to arise to our cause from that quarter. I can detail, if you think it advisable, the successive steps that we took.

#### DESPERATE EFFORTS TO DISARM WOODHULL.

**Q.** I want to know what successive steps you took, and also what suggestions Mr. Beecher made, if any, from time to time, with regard to that apprehended danger?

**Mr. Evarts**—Those steps which Mr. Beecher did not know we will dispense with.

**The Witness**—There were no steps in the business with which Mr. Beecher was not as much connected as either Mr. Moulton or myself, from beginning to end.

**Judge Neilson**—The counsel meant conversations when Mr. Beecher was present. [To Mr. Fullerton.] You intend that, I suppose?

**Mr. Fullerton**—Undoubtedly, Sir; and the witness so understands it.

**The Witness**—Mr. Beecher at this interview was greatly agitated. Mr. Moulton told him he thought there was no cause for alarm; that we could bring influences to bear upon Mrs. Woodhull to quiet her and keep down the threatened publication. Mr. Moulton said he did not see what reason a woman

could have who didn't know either Mr. Beecher or Mr. Moulton or myself—who could not be supposed to have any personal enmity against us or any interests in us. Mr. Moulton said he did not see what motive the woman could have for carrying forward any enmity, and that she needed only to be touched by kindness in order that all the enmity which had thus far exhibited itself in the threat might disappear. Mr. Moulton said that his method was—his proposition was—to treat her with kindness, do some service for her, put her under some obligation to us. Mr. Beecher said that he would very cheerfully co-operate in that plan, and he thought it was the best and the only plan. He asked me if I would co-operate. I said I would; and we agreed, as part of the method by which we should deal with Mrs. Woodhull, that we would become personally acquainted with her; that we would treat her as gentlemen should treat a lady, and that we would in that manner put her under obligation to us—social obligation, kindly obligation. We agreed, also, that as she was a woman we would put her under the restraint of womanly acquaintanceship; in other words, that she should make Mrs. Tilton's acquaintance and Mrs. Moulton's. Mr. Beecher said it was impossible for him to do anything in that regard with Mrs. Beecher; that she would never make any alliance with him to any such end; she was a hard woman to get along with, and she must be left out of that account. In pursuance of this conversation, Mrs. Woodhull was invited by me to come to my house. There she made Mrs. Tilton's acquaintance, much against Mr. Tilton's wish. In pursuance of the same arrangement, she was taken to Mr. Moulton's house and was introduced to Mrs. Moulton, very much against her wish. Mrs. Moulton objected so strongly that she went to Mr. Beecher and Mr. Beecher had a personal interview with her—

**Mr. Evarts**—Well, now, you were not present.

**Mr. Fullerton**—One moment.

**Mr. Evarts**—Well, that I assume from the language of the witness.

**Mr. Fullerton**—I would not offer it unless I would be able to connect it. [To the Witness.] You may state what, afterwards, Mr. Beecher said to you on that subject. **A.** Mr. Beecher told me that he hoped that the two ladies (referring to Mrs. Tilton and Mrs. Moulton) would be able with our help to hold Mrs. Woodhull under kindly obligations to us, and that he hoped that neither of them would make any objection to her coming either to my house or to Mrs. Moulton's. He told me that he had spoken to Mrs. Moulton on the subject—he never told me that he had spoken to Mrs. Tilton on the subject. I don't know that he ever did speak to her. I know both from himself and from Mrs. Moulton, and from Mr. Moulton, that Mr. Beecher did have an interview with Mrs. Moulton on that subject, and request her to invite Mrs. Woodhull to her house in pursuance of that same arrangement a few weeks after the publication of Mrs. Woodhull's threatening card of May 22, 1871. I carried out my part in good faith by the publication in *The Golden Age* of an article alluding to various ladies connected with the movement for woman's enfran-



chisement, in which I alluded in a complimentary manner to Mrs. Woodhull.

Mr. Evarts—Is that article here ?

Mr. Fullerton—Not that I know of.

The Witness—Shortly afterward Mrs. Woodhull sent for me and told me that she had been engaged with Gen. Butler, and, I think, Judge Loughridge of Iowa, both Members of Congress and both members of the Judiciary Committee of Congress.—that she had been engaged with those gentlemen in getting Congress, or a Committee of Congress, to report to this effect, namely, that the XIVth and XVth Amendments of the Constitution of the United States, strictly and technically interpreted, would accord, as they now stand, the right of suffrage to women, on the ground that those two amendments give suffrage to all citizens, and that women are citizens; therefore, by those two amendments women are likewise voters. She told me that Gen. Butler had written an elaborate report to that effect, but that it was not in such a shape as to command the popular attention. She told me, also, that her husband had written that same idea in an elaborate form, but that his writing was too didactic to command the popular attention, and she asked me if I would consider that topic, would take up the argument, handle it, master it, and would put it in popular form. I said I would look into it. I took up the argument, and, thinking thereby to do her a service, I spent a week in putting that argument in a close and compact shape, in as good English as I could command, and I addressed it in the form of a public letter or tract to Mr. Charles Sumner. That was one service which I did for her in pursuance of the arrangement to which I have already adverted.

#### HOW THE WOODHULL BIOGRAPHY WAS WRITTEN.

Some time after that—a few weeks—Mrs. Woodhull again sent for me and put into my hands a roll of manuscript which she said was a biographical sketch of her life, written by her husband; that it was not written as satisfactorily to her as she desired it to be; and she asked me if I would take it and read it, and either revise it, or amend it, or make it out anew, that it might the more readily command the popular ear. I took that manuscript and I read it, and I read it twice; and, instead of merely revising it, I sat down, and, at one heat, I wrote in a—in what I designed to be a newspaper article—the sum and the substance of that narrative, a biographical sketch of Mrs. Woodhull. After it was done I took it to her house in the evening. I read it to her. I had done it as well as I could. She expressed great dissatisfaction with it. She said to me: "You have left out the most important parts." "Well," I said, "I have left out some extravagant parts which I thought would mar the narrative." She said, "I wish you would put them in again." "What!" I said, "Do you want me to say that you have called a dead child to life?" "Yes," said she, "I do: for to write my life and leave out that incident would be to play the part of Hamlet with Hamlet omitted." I said, "Do you want me to say, as this narrative has done by

your husband, that you have had the power to heal the sick, like the apostles?" "Yes," said she, "I do, because that is the exact truth." And I asked her if she wanted me to say also that she had communication from the spirit world from the Greek orator Demosthenes; and she said, "Yes; for sometimes he speaks through me." "Very well," I said, "If you want them all in I will put them in." So I took that manuscript, which I thought I had completed, and I sat at the writing-table in her third room, her back parlor—it was a Summer night—and I spent two or three hours in writing in these supplemental incidents. I was until two or three o'clock in the morning. I completed the manuscript. When it was done I threw myself down on the sofa and slept all night, and took breakfast in the morning, and read it to the family. They pronounced it perfect. I went and published it. That is the history of that sketch. A few weeks after that, possibly six or seven, Mr. Moulton told me one day that he had received from Mrs. Woodhull a letter, or that he had received from Mr. Beecher a letter which she had written to him, asking that he might preside at a public meeting in Steinway Hall, and I went the next day to Mr. Moulton's house on purpose to be present at an interview appointed to be held between Mrs. Woodhull, Mr. Beecher and Mr. Moulton. I reached the house too late. Mrs. Woodhull had been there and had gone. Mr. Beecher then was there; Mr. Moulton was there. They told me the result of the interview. Mrs. Woodhull had urged him to preside at her lecture, and he had made objections to doing so. I told him that I thought he might preside; that I had once presided at a lecture for her; and, by the way, in my narrative I have omitted to state that one evening I presided for her at Cooper Institute when she delivered a lecture on Finance—a perfectly harmless and stupid production, of which I think nobody has heard since. I said, "I have once presided for Mrs. Woodhull; nothing came of it; no harm grew out of it, and if you will go and preside at her meeting you can do it without harm to yourself, and you will put her in that public way under such obligation to you that I think she has been put under to me. I don't think that woman can ever turn and injure me after what I have done for her, and if you will in some public way identify yourself as being friendly to her—not that you agree with what she says, but if you will go and preside at that meeting, I think she will consider that an act of courtesy done by you, and it will be a new bond by which we shall all be able to hold her against any ebullition of her strange mind." Mr. Beecher did not positively decline, but he didn't see how he could do it. Nevertheless, if during the afternoon, he said, he came to a different conclusion, he would go and preside. I went that evening with Mr. Moulton purely out of curiosity to the meeting; I had no expectation of going; I had not been invited to go, and nothing had been said to me about presiding. A great crowd was present; we were there a few minutes before eight. Mr. Moulton said, "Why we can't get in." I replied, "There are more doors than one to Steinway Hall, I have been here before; there is a rear entrance. I went around to the rear entrance; I went up stairs and I

heard somebody say that there were no brave men in these cities, that several gentlemen had been asked to preside at that meeting, and no man had the courage. I saw Mrs. Woodhull, and she was weeping. She said she did not believe there was a courageous man on the face of the earth. "Well," I said, "that is a very singular accusation to make." Said she, "Nobody will preside for me; several gentlemen have been asked; everybody declines, and I am going upon the platform alone," and she started to go. I said, "Wait a moment, I will not have you go before that great audience alone. I was born in this city, and people will hear me, and I will introduce you," and I caught up my hat and my coat, and I stepped in front of her to the platform, and I made a little speech which Mr. Moulton repeated to you the other day. That is the history of the Steinway Hall meeting. That was the last public service, if it was one, that I rendered to Mrs. Woodhull. On the next day I went out of town for my lecturing season; this was in November, 1871. I was gone all the Winter, with occasional days at home, until the next March or April, and at that time Mr. Moulton and I made a call upon her, a friendly call, which he has detailed in his narrative to you.

Mr. Evarts—It is not necessary to refer to Mr. Moulton.

#### MRS. WOODHULL UNSHEATHS HER SWORD.

The Witness—Two or three days after that my attention was called to what purported to be an article prepared and put in type for Mrs. Woodhull's paper, an article—I was trying to remember the title; it has slipped me at this moment—the title was "Tit for Tat." It was an article in which she violently assailed a dozen or twenty—

Mr. Evarts—I suppose, if your Honor please, we can hardly have the contents of a long article recited.

Mr. Fullerton—Q. Well, without stating the contents of the article, state what took place in reference to it? A. I read that article. I went straightway to Mrs. Woodhull's office, and I saw her, and I asked her if she had written such an article, or had it written for her, or designed to print ~~it~~ an article—

Q. Well, go on. A. She said it should not be printed, and I left. Two or three days afterward I found that it had not been printed, but that multitudinous slips of it had been struck off, and these slips had been sent about, so that, though it was not published in a technical sense, it had been really published. I then went down to her. I told her that I had defended her as a woman when she was attacked, and that now, as she had in return attacked other women, I washed my hands of her forever. I walked out of her office, and I have never seen her from that day. I will say further, that I reported the substance of that incident to Mr. Beecher at Mr. Moulton's house, and Mr. Beecher said to me he thought I had done an unwise thing to break my acquaintance with that woman; that she had been sufficiently dangerous even when we were on friendly terms with her, and there was no telling what she might do if we became her enemies, and he asked me not to exhibit enmity toward her. He urged me to continue with Mr. Moulton the

same kindly services in order to strengthen the same influence to which I have adverted in the past months. I wish to say distinctly to the jury that my relationship to Mrs. Woodhull was a foolish one and a wrong one, as the event has justified, and I do not ask any man to defend me for it, but to blame me for it. But I say here before God that Mr. Beecher is as much responsible for my connection with Mrs. Woodhull as I am myself.

Q. Now, Mr. Tilton, I want to call your attention to the tract you prepared, and to the biography, and to ask you what knowledge, if any, Mr. Beecher had of their publication, and what he said in regard to them, if anything? A. Mr. Beecher never said anything to me in regard to any of the publications that I made in reference to Mrs. Woodhull, other than something to express his thanks multitudinously for all those services.

Mr. Evarts—Now, wait one moment; what did he say? "He never said anything other than something." What he said is what we want.

Mr. Fullerton—That is what I am going to give you, and I will do it without any interruption.

Mr. Evarts—I will interrupt the witness, because he is going to do otherwise than what is right.

Mr. Fullerton—Now, go on. A. Mr. Beecher very frequently inquired of Mr. Moulton and myself how we were getting along with Mrs. Woodhull, and I remember one particular occasion, when he was in peculiar agitation on the subject. The circumstances were these: Mrs. Stowe was writing a novel and publishing it in Mr. Beecher's paper, *The Christian Union*. Mrs. Woodhull sent for me, and asked me if I had read a chapter of it which contained a satire upon herself. I said, "No, I never read a word of it, and I didn't know there was any such satire." Mrs. Woodhull told me there was a certain chapter in this novel—I cannot point it out, for I did not read it myself—which was aimed directly at her, satirizing her under an assumed name, and that she meant to strike the Beecher family. She said that two of the sisters, Mrs. Stowe and Miss Catharine Beecher, had vilified her, and that Henry Ward Beecher, their brother, ought to stop that vilification; that she would hold him responsible for any satire published against her in his paper, and that she meant to strike him, and to pierce him to the quick. I said to her, "Mrs. Woodhull, if you will stop and think that in striking him you are striking yourself, perhaps you will not do it." She said, "What do you mean?" I said, "When ever a woman before the public is vindictive, and draws the dagger to attack others, the result is that she will, sooner or later, destroy herself." I said to her, "Now, if you wish to answer Mrs. Stowe's attack, do it in a way of superior gracefulness, gentleness and charity;" and her face lighted up at that suggestion; and I told Mr. Beecher what I had said to her, and he said, "What do you suppose the woman will do?" I said, "I think Mrs. Woodhull's paper next week will contain, not an attack upon you, but some kindly reference." The paper came out next week with a very kindly article.

Mr. Evarts—Is that article here?



The Witness—I don't know that it is.

Judge Neilson—It came out next week with an article? A. Yes, Sir; it came out next week with an article, and Mr. Beecher read it, and he said to me, "For the kindness that is here expressed I owe to you my thanks." I instance that as one of the numerous illustrations to show the anxiety which Mr. Beecher exhibited to Mr. Moulton and to me in reference to the manner in which we were dealing with Mrs. Woodhull.

Q. Now, then, how long before going to Steinway Hall on the evening of her lecture, where you introduced her, had you contemplated going? A. I had not contemplated going at all.

Q. And you came to the conclusion to go about how long before you started? A. I should think about thirty minutes.

Q. You were under no promise to preside there that night? A. None whatever.

Q. You say you saw an article entitled "Tit for Tat;" where did you see it first? A. It was brought to me at my office by somebody; I have forgotten whom.

Q. Do you recollect who it was? A. I recollect now, Sir. It was brought to me by a lady from California; she came to show me a California statute, and this article fell out accidentally. I picked it up.

#### MR. TILTON ASSAILED IN PLYMOUTH CHURCH.

Q. We will now pass over to December, 1871. If anything occurred during that month with regard to retiring from Plymouth Church, I want you to state what that was. A. In the first or second week, as near as I can remember, of December, 1871, Mr. Beecher came one evening to Mr. Moulton's study when I was present. It was either just before his Sunday night sermon, or before his Friday night prayer-meeting, I don't know which; I remember he said he had not much time to spend, because he had to go to his meeting. He asked me if Mr. Moulton had conferred with me on the subject of my formally retiring from the Church. I told him that Mr. Moulton had said something to me on the subject. I think I told him that Mr. Moulton had shown me a letter which he had written to me on the subject, but I told him that I had expressed to Mr. Moulton my reasons for not retiring from the Church. Mr. Moulton came in, and we had a little talk on the subject together. Mr. Moulton said that he had brought the matter to my attention—this he said to Mr. Beecher. He told Mr. Beecher that he (Moulton) had one view of the subject, and I had another; and, said he, "I will leave Theodore to explain his own reasons in his own way." Mr. Moulton then left the study, and what I said to Mr. Beecher was substantially this; it was a rather hurried interview. He said to me, however, in the beginning, that in view of the events of the Summer and Fall, by a publication of the Woodhull sketch and my presiding at the Steinway Hall meeting, and the little poem called "Sir Marmaduke's Musings," there had grown up in the Church a feeling on the part of the members and leaders that I had been an intense spiritualist, that I had wholly abandoned the orthodox faith, and that I had not attended the Church for a year or nearly two years, and as my name was being bandied up and down the community, they felt that, as a Church, there should be some inquiry made into the matter.

Mr. Beecher said: "You know, Theodore, how dreadful and distressing this is to my feelings, particularly as I understand how you have come into your disrepute; but what can I do? How can I explain to my church members? They are crowding me on every hand. They are saying to me that here is a young man who has been your friend for many years; he has not been here to church for a year and a half, and he is the author of these strange publications, and he is entering into all manner of vagaries, and we must inquire into it." Mr. Beecher said to me: "Now, Theodore, I understand perfectly well the position you have taken, and which you took long ago, that you never again would come to the church, and that you considered yourself not a member of it; but you must remember that your name is still on the roll, and I don't know how I shall get along with our embarrassments. Will you not, therefore, make my position easy by writing to the church a formal letter asking your dismissal, and I will see that that letter is given to you without any reflection." I told him no. I said: "Mr. Beecher, in reference to any criticisms made upon me because I have made a sketch of Mrs. Woodhull's life, or presided at a public meeting on her behalf, you know perfectly well the reasons that have led me to do it, and you have no right to make these reasons a thorn in my side now." I said, furthermore, that as to any offense in the little verses called "Sir Marmaduke's Musings" you have only to treat it as a farmer treats a nettle; clutch it in your right hand and crush it; handle it boldly; put it into *The Christian Union* or read it at your prayer meeting; treat it as if it had been written by Mrs. Stowe, or by some of your friends; treat it as if it was a matter not dangerous to you at all. You can get rid of that very easily." I said: "As to the only remaining thing, my retirement from the church, get rid of that in this way: Say I told you, a year and a half ago, as I did at one of my earliest interviews, that I had then abandoned the church; it is known as a matter of fact that I have never crossed the threshold of the church since then; assume a power and take my name from the roll, or have a new roll printed with my name omitted. If it is dangerous to call attention to the fact that my name is there, get rid of it." I said: "I cannot, with any self respect, ask your church to give me a letter of dismissal after the lapse of this year and a half since I have dismissed myself, because now, if I write such a letter, it will impugn what I have been doing for the last year and a half, and, therefore," I said, "you will remember distinctly I told you I would never again cross the threshold of your church." I told him that I thought that would be very easily got along with if he treated the subject boldly, and assumed that my name ought not to be on the roll. I gave him some of the reasons why I could not consistently ask for any letter of dismissal. One of these reasons was this: "You put your request to me on the ground that my views are different from those of my childhood," but I said, "certainly they are; but allow me to remind you that my views are not different from the views of many members of your church in good standing. I am not more radical in any of my views than Deacon Freeland, or Mr. Claffin, or

any other member in good standing in your church, and it would be a falsehood to say that I must retire from your church because of any liberality in my religious views, for," I said, "your church is well known throughout Christendom as being an asylum for all looseness and liberality of Christian views, and if I retire from your church, particularly as criticisms have been made against me for verging toward liberality of Christian sentiment, people would say 'Well, if Theodore has grown so loose and liberal in his views that he must on that account leave Plymouth Church, where, then, will he go?'" I said: "My views are liberal enough to entitle me to ask a letter of dismissal from an orthodox Congregational church, but they are too liberal to allow me to remain in good standing in the church, and on that ground I cannot ask any dismissal. Furthermore," I said, "although you must remember I have been absent from your church for a year and a half, still my wife and daughters remain members, and their names are on the roll, and that if I retire from the church, leaving them in their membership, it will not produce upon the public the impression that family difficulties have been obliterated, but that family difficulties have been created. I gave him further reasons on that occasion, all of which, perhaps, I have no need to detail here. At all events, as the substance of that interview, I peremptorily declined to ask a letter of dismissal from the church, and told him he must handle the subject in some other way.

#### THE INTERVIEW IN THE CARS.

Q. Do you recollect any time after the interview of which you have now spoken of meeting Mr. Beecher in the cars when going to Boston? A. Yes, Sir.

Q. Do you recollect about what time that was? A. I met Mr. Beecher in the cars one morning a very few weeks after the interview which I have just detailed; I don't remember whether I was going to Boston or coming away from Boston. I remember quite early in the morning, while I was sitting in the cars, writing from just such an inkstand as that I remember—

Mr. Evarts—Which inkstand? A. That one. [Indicating for the counsel.] Mr. Beecher was in the cars. He came up to me and he said, "How is it possible that you can write in the cars?" I said, "I have a traveling inkstand, as you see, and do a great deal of my work in the cars." "Well," said he: "What are you writing?" I was going to hold up my manuscript to him that he might see for himself. Said he: "I hope it is not another 'Sir Marmaduke' poem." I said: "No: it is prose; I am writing an essay on John Wohlmann." Said he: "May I look at the book?" I handed him the book which I was reading, and I said to him: "I read this book because it is a fountain of peace." He drew a long breath, and he said: "A fountain of peace! Tell me where it is: I want to drink of it." He said: "If there is peace in this book, in Heaven's name I must read it, for," he said, "I have come to the conclusion that there is to be no peace for me any more in this life." He then said that he had been thinking of my interview that he had with me at Mr. Moulton's, and that he was a good deal distressed the more he thought of it that I could not write a letter asking for my retirement from that church. He said: "I think trouble will grow

out of it; I cannot give to my people the reason for your absence, and you are a public man, and they will inquire into you, and you have enemies in the church and I cannot suppress them." Said he: "I foresee trouble." I told him that I did not see how trouble could arise if he himself met it firmly. I told him I thought he was allowing one danger to grow up that he might suppress, and I mentioned to him that his newspaper, *The Christian Union*, had shown certain signs of unfriendliness to me. I said: "I don't care for the criticisms of your paper, but I don't think it will conduce to the public regard of our harmony to have your paper criticise me." "Well," said he, "Theodore, the people in my office are rather inimical to you, and I wish I might get some one here to whom I might intrust our secret, so that that paper might assume a more friendly face to the public," a suggestion which he afterwards carried out.

Mr. Evarts—I ask to have struck out the words: "A suggestion which he afterwards carried out."

The Witness—I refer to the introduction of Oliver Johnson, as the editor of that paper, at my request.

Mr. Evarts—Whenever that comes up as a fact—

Judge Neilson—Strike out those words.

Mr. Fullerton—It is perfectly immaterial.

The Witness—I told Mr. Beecher that whatever sources of anxiety he might have in the church on the part of gentlemen who wished to make inquiries into the scandal, which was then just beginning to rise, and which was limited and confined to a very narrow circle—I said: "You must remember there can be no inquiries which don't come through me; no harm can come to you unless I create it; no blow can be struck at you unless I strike it. Now," I said, "go on with your work; have no apprehension on my account." I said: "Of course, my anxiety is not for your safety—it is for Elizabeth; but in protecting Elizabeth I necessarily shield you. Now, you do your work, and don't be downcast, for Moulton tells me you are always full of heartbreaking anguish; relieve your mind from any apprehensions as to any possible danger that may arise through me." He took my hand and he shook it, and he thanked me, and tears came into his eyes, and he suddenly left me, in order, as I supposed, that the passengers might not witness a scene between us. That was the substance of that interview.

#### THE TILTON-BOWEN ARBITRATION.

Q. Now, Mr. Tilton, we come to the arbitration between yourself and Mr. Bowen. When did that occur? A. That occurred about four months after the interview which I have now described.

Q. Bringing it to some time in April, 1872? A. Yes, Sir: shortly after my interview with Mr. Beecher in the cars, which I have related, I went West on a lecturing tour. During that trip of travel I had inquiries put to me by people as to why I had so suddenly sundered my relationship to *The Independent* and *The Brooklyn Union*, particularly after the public announcement had been made that I was going to be connected with those two papers for a term of years. Lecture committees and friends throughout the West said unless there should be some explanation of



that fact, the reasons of my withdrawal from this paper, permanent injury would attach to me. That impression was made very strongly on my mind during my journey, and when I came home, towards the last of March, I consulted with a few of my friends as to how I should remove that impression. One of those persons I remember was Oliver Johnson. I consulted also with others, and as the time had been so long since my retirement from those papers there seemed to be no other recourse—there seemed to be no other alternative left than to explain the fact of my retirement; and in order to explain that fact, in consequence of that fact, as I said a short time before, I wrote a proposed letter to Mr. Bowen, now in evidence, and dated January 1st, 1871. I resolved, in order to put an end to the scandals which were arising to my detriment at that time—scandals taking many different forms, one form that I had been dismissed for drunkenness; another form that I had been dismissed for this, that and the other cause—many different forms—said: “I will put an end to this business, and give the reason why I had suddenly retired from *The Independent* and *The Union*,” and, accordingly, I published, or wrote, with Mr. Oliver Johnson’s assistance and co-operation, my letter to Mr. Bowen dated January 1st, 1871. I designed to publish it. Mr. Moulton was violently opposed to the publication. He said to me: “Theodore, to right yourself in this case you are doing great injury to another, and I don’t think your own justification will justify you in publishing this article. Mr. Moulton expressed himself, and I may say so strongly that I felt the force of his words. He took the article, and he said that he would endeavor to find some other way of rectifying that injurious impression. I ought to say that at the same time I had instituted, or rather Mr. Ward, my counsel in my absence, just before my return, had instituted a suit against Mr. Bowen for the payment of the unpaid money which he still owed me, and Mr. Moulton undertook to keep that case out of court, and at the same time undertook to keep this article out of the newspapers. He said, “Better have no litigation; better have no publication; the peaceful way is the best way.” I said, “I am perfectly willing for peace, provided it can be peace based on justice, but I am tired of perpetual misrepresentation.” He had an interview with Mr. Beecher, at which I was present—a very brief interview. The only feature of it, as connected with Mr. Beecher, as I distinctly remember, was, Mr. Beecher begged me, if possible, to find some other way than the publication of that article. “Why,” I said to him, “You have always said that you were not afraid of Mr. Bowen, and, indeed, you have gone so far on one or two occasions as to say you wished your trouble with Mr. Bowen might be brought to a head; that you thought you could strike this away with one blow; that Mr. Bowen had no ground of grievance, and that he could bring no evidence against you.” “I know” said he, “I am not afraid of Bowen if the fight comes, but,” said he, “you must remember, Theodore, that a clergyman’s reputation is like a woman’s, to cast upon it a suspicion is almost as bad as to load it down with proofs.” And he begged me very strongly not to publish the article, and his wishes had weight. I remember on that occasion that he wept. Perhaps, however, I ought not so frequently to allude to that.

Q. Look at the paper now shown you, being “Exhibit No. 64,” and say whether it is the article you prepared? A. That is the article that Mr. Johnson and I prepared together.

Q. What part of it is in Mr. Johnson’s handwriting? A. That is Mr. Johnson’s handwriting, the manuscript appended to the article.

Q. The manuscript appended to the article? A. Yes, Sir; but Mr. Johnson had some share also in the composition of the article.

Q. What position did Mr. Johnson fill at that time? A. Mr. Johnson was then the editor of *THE WEEKLY TRIBUNE*. The particular part of this article which came from Mr. Johnson—

Mr. Evarts—We have nothing to do with Mr. Johnson.

Mr. Fullerton—Never mind that, then. Did you regard these stories which were afloat in the West, and which you heard of West when on your lecturing tour as detrimental and prejudicial to your character? A. Why, Sir, they were horrible stories. They were stories that I—

Judge Neilson—That answers the question.

The Witness—They were not detrimental to my character; they were detrimental to my reputation.

Mr. Fullerton—Did you regard it as necessary, for your reputation, to refute them by the publication of that article? A. I did.

Q. Had you any other object in view in preparing that article? A. None whatever.

Mr. Evarts—I don’t know that we have anything to do with that.

Judge Neilson—Perhaps that has gone far enough.

Mr. Evarts—People are to be judged by their conduct.

Mr. Fullerton—Well, we will get at people’s motives.

Mr. Beach—They are sometimes judged by their motives.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Facts can be shown. Horrible stories are shown.

Mr. Fullerton—We have a right to show what motives prompted that.

Judge Neilson—Still, in general, a motive is a mere inference from the act.

Mr. Fullerton—Your Honor will understand a different motive is imputed to him.

Judge Neilson—You have the fact.

Mr. Evarts—That is the trouble, that they are not allowed to state what was the motive. His acts must be judged of by those to whom they are submitted.

Mr. Fullerton—That is not a good rule of law or philosophy either.

Mr. Evarts—You cannot examine him as to that.

Judge Neilson—Go on.

Mr. Fullerton—Had the preparation and the publication, or the proposed publication of that article any connection at all with your prosecuting the claim against Mr. Beecher?

Mr. Evarts—That I object to.

The Witness—Not at all.

Judge Neilson—The article is in.

Mr. Evarts—I have a right to cross-examine this witness about his motives; they have not a right to do so.

Judge Neilson—I think the objection is well taken.

Mr. Fullerton—I have a right to examine him about his motives, but not to cross-examine him about them.

Judge Neilson—If it appears from the article that it had some connection with the claim upon Bowen, then the inquiry would be proper, but if it does not appear from the article that it had some connection with the claim upon Bowen, then it is unnecessary.

Mr. Fullerton—I put the question for the purpose of having it remembered that I propose to prove it, because it may be necessary for me to do it in reply.

Judge Neilson—We will recollect it.

Mr. Fullerton—Your Honor will be good enough to bear in mind that the proposition has been made.

Q. Do you recollect the occasion of the execution of the tripartite agreement, so called? A. I do, Sir.

Mr. Fullerton—[To defendant's counsel.] Will you be kind enough to let me have the original? [To the witness.] I will put this other question, Sir; you need not answer it, Mr. Tilton, until you see what disposition is made of it. Were you advised at the time, and did you so believe, in good faith, that you were entitled at law to recover the \$7,000 which you afterwards got from Mr. Henry C. Bowen?

Judge Neilson—I think he may answer that; yes or no.

Mr. Evarts—If your Honor please, that of course lets in my inquiries as to who gave him the advice, and on what it was founded.

Judge Neilson—Yes, Sir.

The Witness—Am I to answer, Sir?

Mr. Fullerton—Yes, Sir.

The Witness—[To the stenographer.] Will you do me the favor to again repeat it?

THE TRIBUNE stenographer read the question.

Mr. Evarts—This inquiry, if it is allowed to be put, lets in the inquiry into what the advice was, by whom given, and on what facts it depends.

Mr. Beach—I do not see any necessity of your Honor ruling upon that just now.

Mr. Fullerton—When the question comes up—

Judge Neilson—I will rule when it does come up, but I only intimate now that I think that opens the door to them.

Mr. Evarts—My friend must not complain of surprise.

Mr. Fullerton—I am not surprised at anything.

Mr. Evarts—Well, you won't be.

Mr. Fullerton—No, not at all; but sufficient unto the day is the evil thereof.

Judge Neilson—He don't object to your being surprised; he says you should not complain of it.

Mr. Fullerton—No, Sir; I should not be surprised, nor will I complain of anything they do; but what I do not want is this; that the counsel upon the other side should ask your Honor to decide in advance upon a question that may come up some four or five weeks hence.

Mr. Evarts—You have heard his intimation as to that.

Judge Neilson—Read this question to the witness.

THE TRIBUNE stenographer repeated the question. "Q. Were you advised at the time, and did you so believe in good

faith, that you were entitled at law to recover the \$7,000 which you afterwards got from Mr. Henry C. Bowen?"

Judge Neilson—Say yes or no.

The Witness—Yes, Sir. I understand your Honor to limit me as to that answer, not to say who advised me.

Judge Neilson—No; that answers the question.

The Witness—Perhaps I ought to add, Sir, that I have that advice in writing.

Judge Neilson—No.

Mr. Fullerton—I should have asked you in its proper connection whether you did write a letter to the church or any of its officers, in order to effectuate your intent, as expressed to Mr. Beecher in that conversation, in dissolving your connection, or in getting your name from the roll? A. At a later period, Sir, I wrote, at Mr. Oliver Johnson's request, a little note, which was to quiet the scruples of Mr. Halliday.

Mr. Evarts—Well, well! we don't want the matter characterized.

Mr. Fullerton—No, if you will just give us the note.

Mr. Evarts—The note will speak for itself. It is of no consequence at whose request it was written.

Q. Did you have the note published in your statement? A. I have never seen that note since.

Mr. Beach—They have got it.

Mr. Fullerton—They have got it. I have asked for it. Brother Shearman will find it, I guess.

The Witness—My impression is, however, that that note was not written until the Summer of 1873. It had no connection with the events that we have just been narrating.

Mr. Fullerton—I will pass from that subject, then, until you find the note.

Mr. Beach—They have got it.

Mr. Evarts—[Producing the papers.] They do not seem to be admissible as acts towards the church, but there is nothing in them that we have any objection to.

Mr. Fullerton—First, the letter from Oliver Johnson. [Reading:]

NEW-YORK, July 10, 1873.

MY DEAR MR. TILTON: I frequently hear it said that you are a member of Plymouth Church, whereas I have understood that you withdrew from it several years ago. Am I right or wrong?

Yours truly,

OLIVER JOHNSON.

Marked "Exhibit No. 71."

Mr. Fullerton—I now read the answer to that letter:

BROOKLYN, July 11, 1873.

MY DEAR MR. JOHNSON: You are right in your recollection. I am as much surprised as you are that anybody should consider me a member of Plymouth Church. It is now verging toward four years since I ceased my association with it. You know that I left it even before leaving *The Independent*. My name is still on the records it is just as an old nest clings to a tree after the bird has flown.

Ever yours,

THEODORE TILTON.

Marked "Exhibit 72."

Mr. Fullerton—There is another letter in this connection that I desire to put in, but it does not seem to be at hand.

Mr. Beach—Mr. Tallmadge, I understand, will produce it this afternoon.



## HOW OTHER CRIES WERE HUSHED.

Mr. Fullerton—I will call your attention then to another subject. Something has been said as to a proposition to treat you different in *The Christian Union*. Just refer back to that subject. What was said upon that subject? A. What was said by whom?

Q. Mr. Beecher, when his attention was called to it? A. I think the first I heard from Mr. Beecher on that subject was in the interview which I held with him on the cars either going to Boston or coming away from Boston in the early part of January, 1872. At two or three times subsequent to that, during that same year, 1872, and particularly toward the close of the year, in November and December, Mr. Beecher said that in his judgment it would be necessary to have some one in *The Christian Union*, some editor of his paper who could handle that journal with more skill in reference to the scandal; hitherto, unkindly remarks had been made in his paper about me, and he wanted remarks of a different character to be made; he wanted the case now wisely handled, and he said: "I cannot trust any of my editors to do it, they are not friendly to you, and they do not know any of the facts in the case, and that is a great misfortune." I suggested to him that I could point out a way to remedy that difficulty. I said to him: "In the first place, your paper is dull and needs improvement, and if you will take my office edit r, who used to be with me on *The Independent*, namely, Mr. Oliver Johnson, who knows all the facts in this case, or at least who knows the central fact, from my having confessed it to him in the Summer of 1870, and if you will make him your managing editor, he will greatly improve your paper for one thing, and he will handle this business with necessary skill and kindness for another thing." Mr. Beecher said that was a good suggestion. He said he would consult with his associates in the office about it. He afterwards told me that he had consulted with them; some of them were favorable, some were unfavorable. He reported to me from time to time during a number of weeks the progress of the negotiation, or rather the process by which he was attempting to open the door of *The Christian Union* for the admission of Mr. Johnson as its editor, without exciting any undue suspicion on the part of those gentlemen already there connected with the staff. Finally, Mr. Beecher told me that the way was clear to invite Mr. Johnson in, and he asked me what compensation I thought Mr. Johnson should have; what kind of arrangement ought to be made. I told him I thought Mr. Johnson was master of his profession and was growing old, and he ought to have \$5,000 a year, and he ought to have a contract by which his relationship to the paper should be preserved and maintained for a term of years. I wrote that contract, and Mr. Johnson went into *The Christian Union* and became its managing editor, and is its managing editor to this day, I believe, under that contract which I wrote.

Q. Something was said, I believe, at one time, of the unfriendly character of some article in *The Christian Union* toward you; when was that conversation? A. At various times during the year 1872 Mr. Beecher spoke to me of the difficulties which he had in his office. There was a disposition, he

said, on the part of gentlemen in his office to make flings at me; he generally kept them out of the paper; he told these gentlemen that they must not do such things; still he said that they would creep in; and the very fact that these gentlemen were writing such things, and he was put to the perpetual necessity of suppressing them—that that of itself was a cause of suspicion, and gave him great trouble and worry. That was one of the reasons why he wanted a managing editor who was friendly to me.

Q. I call your attention now to an extract from *The Christian Union*, on page 337 [referring to printed book], and ask what preceded it—the publication of it—between you and Mr. Beecher? [Handing witness the printed book.] A. After Mr. Bowen paid to me the \$7,000 which the arbitrators awarded under the contract, Mr. Claflin asked me, or perhaps Mr. Moulton asked me as coming from Mr. Claflin, whether or not I would sign a document to the effect that if Mr. Bowen took back all the charges which he had made against Mr. Beecher, I would cease to circulate those charges. I said I would do so with profound pleasure, because I considered that every accusation set afloat against Mr. Beecher by Mr. Bowen or by anybody else, might, in the long run, add weight to the accusations which might arise against Mrs. Tilton. A paper was drawn, indeed it had been drawn on the day of the arbitration, perhaps the day before. After the arbitration that paper, with some changes—changes made at my suggestion, with a view more definitely to make clear the point which I have just stated, namely—

Mr. Evarts—The changes will speak for themselves.

The Witness—I signed that paper.

Q. Do you now refer to the tripartite agreement? A. I do, Sir. What was your next question, Sir?

Q. What preceded the publication of that extract from *The Christian Union*? A. After Mr. Bowen, on that evening, drew his check to pay me the money, which he did on the spot, he said to me that he had never entertained any—I beg pardon, Sir, for not addressing the jury—he said to me that he never had entertained any unfriendly feelings towards me, and that if I supposed he had, that I was mistaken, and that he desired to make any public reparation which I thought proper. I told him that I desired the publication in the subsequent *Independent* of a little note of mine, and of some proper answer on his part. He said he would make such a publication, and did make such a publication. In addition to that publication he sent to me two private notes, taking back—

Mr. Evarts—No matter about the contents of the notes.

Mr. Fullerton—No; do not give the contents of the notes.

The Witness—Well, I can give you the notes. All this was published in Mr. Bowen's paper, either on the first week or the second; at all events, the first issue that followed the arbitration, very highly—

Mr. Evarts—Well.

Mr. Fullerton—I will put it in evidence.

The Witness—Very well. In Mr. Beecher's paper of the week following, he took out what Mr. Bowen had published in *The Independent*, copied it in *The Christian Union*, and he accompanied it with comments in my justification and vindication.

Q. Is the article before you the commentaries of *The Christian Union* upon that occasion? A. Yes, Sir; I now hold it in my hand.

Mr. Fullerton—I now propose to read it.

Mr. Evarts—The narrative of the witness includes the publication in *The Independent* as the text upon which this in *The Christian Union* is based.

Mr. Fullerton—It is not the opinion of Mr. Beecher in regard to the article in *The Independent* that I care about; it is the expression of his opinion irrespective of that article—although that was the pretext for it—in regard to Mr. Tilton himself.

Mr. Evarts—The transaction, if it be given as a publication, should be given in its own dimensions, that we may have the benefit, on the one side or the other, of it—its true features, that is all.

Judge Neilson—In other words, you think *The Independent* should be put in as well as *The Union*?

Mr. Evarts—Yes, Sir.

Mr. Fullerton—There is no objection to it at all.

Judge Neilson—Read this part first and consider the other in; and it can be marked hereafter.

Mr. Fullerton—I will read this part now.

Mr. Beach—I do not suppose it to be the rule, because we put in something that Mr. Beecher said, that we are obliged to put in what it is founded on.

Mr. Evarts—No; but it does depend on whether you now agree to put it in or not. I will go on with my objection if you do not.

Mr. Fullerton—I do not agree to put it in, because I do not know that I can find it yet; I have never seen it myself; I have only seen the commentary from *The Christian Union* upon that article, and the independent opinion which Mr. Beecher expressed in regard to Mr. Tilton.

Judge Neilson—I think it will be well to put the article in hereafter, when it is found.

Mr. Beach—We have not the slightest objection.

The Witness—I will state.

Mr. Fullerton—That the article in *The Independent* to which you refer is partly quoted in the page before you.

Mr. Evarts—Which makes it still more important that we should have the whole.

Mr. Fullerton—No.

Judge Neilson—I think it is just as well.

Mr. Fullerton—This is from *The Union*, of April 17th, 1872:

This honorable testimony from Mr. Bowen ought to clear away the misconceptions which have shaded the path of this brilliant young writer. *We have never parted with our faith that time would reconquer for Theodore Tilton the place in journalism, literature and reform to which his talents and past services entitle him.* \* \* \* \* Upon this testimony of the estimation in which his principles and character are held by a wise and strong man, who was closely associated with him for fifteen years in the conduct of *The Independent*, the public must needs put aside prejudices of judgment which they have permitted to cloud this young orator and writer. Those who know him best are the most sure that he is *honest in his convictions, as he is fearless in their utterance, and that he is manly and straightforward in the ways in which he works for what seems to him best for man and for society.*

We trust that the gold in *The Golden Age* will not grow dim, but that, dropping its dross in the refining fires, it will shine with the luster of gold seven times refined and purified.

Marked "Exhibit No. 73."

#### MR. TILTON AGAIN SUGGESTS RESIGNATION.

Q. Do you recollect the occasion when Mr. Beecher dined at Mr. Moulton's and you were present? A. Yes, Sir.

Q. Do you recollect when it occurred? A. I cannot fix the precise date. If anybody knows the night on which I spoke in the Academy of Music during the Greeley campaign, it was that night.

Q. It was that night? A. Yes, Sir.

Q. It was in the Autumn of the year, then, 1872? A. It was October, I think.

Q. Do you recollect anything that occurred at that time? A. The only feature of the occasion which can have any reference to the subject now in hand is this: Mr. Beecher said to me either that he was going to have or had had a silver wedding in his church—the celebration of the twenty-fifth year of his ministry. I do not remember whether it had just passed or was just to come; at all events it was still fresh; it was a topic then in his mind, and he brought it to my attention. He spoke to me about his popularity and the strength of his friends and his friendships, of his coming to the acme of his life, and he told me also that it was a great delight to him to hear that I had gone during the Summer at the head of troops of friends, likewise, resuming my public career. He said to me that he had noticed however, in human affairs, that when men were at the point of their prosperity, they were sometimes nearest to their downfall, and he asked me if there were any particular, pressing and eminent dangers in our case. I said to Mr. Beecher on that occasion that I had a suggestion to make to him, which perhaps would not come with a good grace from me; nevertheless I did it in the interest of Elizabeth and future peace. I said to him, "You have terminated or are to terminate with great honor the 25th year of your ministry. It is a good time for you to resign. You can hope for nothing better in this world in the way of honor in your pulpit than you have achieved. You are writing the Life of Christ, the second volume is not completed, and you will have a good excuse to go to the Holy Land. It can be known to all the world that you have gone to see with your own eyes the footprints of the Master whose life you are now writing, and if you now resign it will be a fitting time to do so, and such a resignation, which heretofore would have been accompanied with suspicion and danger, would be now, in my judgment, the surest way to provide peace for the future." I said, "I do not ask you to do it, but I am in constant apprehension that something will arise where there are so many curious eyes prying into our secret, and so many gossiping tongues talking of our affairs—I fear," I said, "that something will arise to make it dangerous for you to continue longer in your pulpit, and you will never have such an opportunity to resign amid the world's good opinion as now. I ask you to think of it." That was the substance of what I



said. He said he thought the suggestion was a good one and he would think of it. That is all that I remember that occurred on that evening.

#### MRS. WOODHULL'S ATTACK.

Q. I then pass to the publication of the Woodhull scandal, so called, of November, 1872. Do you recollect its publication? A. Yes, Sir.

Q. Now, if there was a meeting subsequently to that publication between yourself and Mr. Beecher, I want you to state what it was. A. That publication was made while I was in the northern part of New-Hampshire concluding my labors in that campaign. I came home to Brooklyn on the morning of the Presidential election, which I think was November the 5th. As soon as I entered the house, Mrs. Tilton, with great distress, put into my hands a copy of *Woodhull & Cluffin's Weekly*, which was the first knowledge I had of the publication of the story. I read it twice over, as swiftly as my eyes would run up and down the columns, and I made haste to Mr. Moulton's house, and he sent for Mr. Beecher to meet me, and we had an interview. I was informed at that interview either by Mr. Beecher or by Mr. Moulton—I have forgotten who; perhaps by both—that the paper had been before the city for a week or ten days. My impression is that it had been the town talk not merely from the date of its publication, which was November 2d: I was informed. I think, that it was widely circulated up and down the streets several days previous to its actual date, some time towards the end of October; in other words, that it had been going up and down before the public for a whole week, and perhaps more, during my absence. That morning, however, was the first intimation that I had that any such publication was in existence. They informed me that they had had a talk about it, and that the best judgment to which they could arrive after these talks was that the story would be best killed by silence, and they wanted to know if I had any suggestion different from that. I do not know that I can repeat the conversation on that occasion. The substance of it was that no other course was left than silence, but I remember that silence was determined upon, not because the story could not be denied, for the particulars of the story were but the truth—

Mr. Evarts—Well, we better have what passed.

Mr. Beach—If anything was said upon that subject the witness can state it.

The Witness—Mr. Beecher said the reason why he felt that the best policy would be to say nothing on the subject in public was this, that if any denial was made it would only provoke the Woodhulls to reproduce the story in some other form, to reiterate it; that a denial would not quell it; that they evidently meant mischief, and that they would repeat it in one form or another; and that if it was denied once it would have to be denied twice, and perhaps three times, and many times. That was the reason why the policy of silence was agreed upon, and not because the story could not in its essential parts—

Mr. Evarts—Not "because." What was said in the reasons given by him?

Mr. Fullerton—Was there more than one meeting on that subject? A. Yes, Sir; there were several.

Q. Where did they generally take place? A. Always in Mr. Moulton's study.

Q. Do you recollect anything else that was said by Mr. Beecher at any one of those meetings? A. At one of those meetings a little later than that, he said that he had changed his mind in regard to the policy of having nothing said in public; he said that he thought that I ought to publish a card; and he prepared a card. That card—I think it has been given in evidence. I told him that the objection to publishing any card was, by me, that I was the wrong man to say anything on the subject; that as the story connected Mrs. Tilton with himself he was the proper person to publish anything, if anything was to be published. I said, "The public at large will understand that I am the third party in the case and that it would be very natural for a husband to deny such a story concerning his wife; that I was not the proper person either to deny or to explain or to do anything about it.

Q. Look at the card now shown you, and say whether it is the one proposed by Mr. Beecher upon that occasion [handing witness Exhibit No. 23]? A. Yes, Sir; this is the card.

Mr. Fullerton—It is the one commencing "In an unguarded enthusiasm I hoped well and much of one who has proved utterly untrue. I shall never again indorse her story, and now utterly repudiate her story as concerning me and mine."

To the Witness—What became of that card: was it published? A. This piece of paper?

Q. No; was it published; that is what I want to get at? A. No, Sir; I objected to it in toto.

Q. What objections did you raise in the presence of Mr. Beecher? A. I told Mr. Beecher that I was not the proper person to publish anything whatever on the subject; that he might do as he choose; he might deny it, and I would never contradict his denial, but that I would publish nothing, that I ought to publish nothing, and in particular I would publish no such flimsy card as that. I said to him that he knew very well that my relations with Mrs. Woodhull had not been prompted by an unguarded enthusiasm; that I had gone to Mrs. Woodhull, deliberately, and by design, to protect Elizabeth; that he had been a partner in that design, that it was no unguarded enthusiasm by either him or Mr. Moulton or me; and I said furthermore, "Suppose I should publish this card, what would the public say of it? They would simply say this: that 'Mr. Tilton's wife has been violently attacked in the public prints, and what does he do in view of that attack? He simply publishes a card vindicating himself, shaking himself free and clear from the odium that had hitherto attached to him for his associations with Mrs. Woodhull.'" I said: "This is not a card in vindication of Elizabeth, nor in vindication of you, but in vindication of me; and the attack is made upon you and upon her, and no vindication of myself by my pen will answer the purpose." I ejected the card. I said that I would have nothing to do with

any such publication; and I told him, furthermore—and I was very angry when I said it—that I was aroused and indignant to think that he endeavored to put upon me the responsibility of meeting that Woodhull story. I told him that he was involved with Mrs. Tilton, and that if her vindication was to come, if he was a brave man it should come by him at whatever cost, and I rolled upon him whatever responsibility was to be assumed in the case.

Mr. Fullerton—I shall not finish another topic, Sir, if I take it up.

The Court then took a recess until 2 p. m.

#### THE TRACY INTERVIEW AT MOULTON'S.

After recess the direct examination was continued as follows:

Mr. Fullerton—I call your attention next to an interview at Mr. Moulton's house, soon after the publication of the Woodhull story, where Mr. Tracy was present; do you recollect such an interview? A. I do, Sir.

Q. Who were present at that interview? A. Mr. Tracy, Mr. Franklin Woodruff, Mr. Francis D. Moulton and myself.

Q. And it took place, I believe, in the study of Mr. Moulton? A. Yes, Sir.

Q. What occurred after you joined those three gentlemen?

Mr. Evarts—Won't you give the date?

Mr. Fullerton—Yes; soon after the publication of the Woodhull Scandal.

The Witness—As to the date, my impression is that it was on the first Sunday night succeeding, but I will not be—I will not swear that that is the accurate date. The interview took place not far from that time.

Q. Was it the first Sunday evening after you returned from New-Hampshire? A. I think it was; at the same time I could not bind myself to that statement.

Q. Now, please state what occurred? A. I cannot state what occurred at the whole interview, for I—

Q. What occurred after you joined the party, my question was? A. I was sent for to go to Mr. Moulton's house; Mr. Moulton met me in his front room on the second story—I think in the early part of the evening, I will not be accurate as to that—and told me—

Q. No; you may omit what Mr. Moulton told you. Relate only what occurred after you came into the presence of Mr. Tracy? A. Well, Sir, I went into the presence of Mr. Tracy.

Mr. Evarts—Your Honor will notice, this is an interview at which Mr. Beecher was not present.

Judge Neilson—Subject to the same question that was raised when Mr. Woodruff was examined.

Mr. Evarts—We object to any evidence concerning it.

Mr. Fullerton—Precisely the same question, and relates to the same interview.

Mr. Evarts—Your Honor will note my exception.

Judge Neilson—Now, begin at what you first heard and follow through.

The Witness—Well, Sir, I don't see how I could make intelligible to the jury what I said to Mr. Tracy at first without an explanation of how I came to say it.

Q. Well, that is our misfortune; just state what took place after you arrived in the room? A. Well, I went up into the study—I there saw Mr. Tracy and Mr. Woodruff; Mr. Moulton had accompanied me to the study; I was the first to speak, and I said, as nearly as I can recollect: "Mr. Tracy, this whole interview is without my consent and against my protest; I have not authorized you in any way, through any party, to be the custodian of any of the facts in this case. I now learn that some of them have been communicated to you, and that you are to see the rest, and to examine the papers. I have not been consulted, and I protest; but," I said, "as the case has gone so far, as Mr. Moulton informs me that by Mr. Beecher's advice, and Mr. Woodruff's, and his own, you have been taken without my knowledge into consultation on this case, I want to exact from you a pledge and promise in advance." He said, "What is it?" I said, "I am not a lawyer, Sir, and do not understand the etiquette of your profession; but I want you, either as a lawyer or a gentleman, to give me your word of honor, that if Mr. Beecher and I should ever come into collision, he on the one side and I on the other, you would not act as his counsel against me. I will not consult with you unless you give me that pledge." He said, "Mr. Tilton, I give you that pledge both as a lawyer and as a gentleman." I said, "Very well;" and we then proceeded to a consultation.

Q. Now, Sir, what occurred further at that consultation?

A. The first incident which I remember distinctly was the handing over to Mr. Tracy by Mr. Moulton of the document now in evidence, and known as the letter of contrition. In other words, Mr. Beecher's communication to me through Mr. Moulton, dated January 1st, 1871.

Q. Did he peruse it? A. Did Mr. Tracy peruse it?

Q. Yes. A. Yes, Sir; he held it in his hand; it consisted of three sheets, and he read one and put that under the bottom, and then the other and that under the bottom, and then the other; and I think he read it in that way four or five times over; and at the conclusion of the reading he laid the paper down on the table and, said he: "Great God! I have never known anything like this!" And, said he, "The man who could dictate such a paper as this, who could express so much grief and heartbreak, has already been punished enough; and he ought not to be further exposed; his griefs ought not to be exposed to the world."

Q. What further occurred at that interview, if you recollect?

A. Mr. Tracy told me that it was a case which ought to be very summarily treated. He said that he had told Mr. Woodruff, and had told Mr. Moulton, and he would tell me, that while in the ordinary affairs of life lying was not justifiable but was reprehensible, yet this was a case in which the truth ought to be denied, and that lying was right. He said, furthermore, said he: "I address that statement, Mr. Tilton, particularly to you as I have done to them, for the reason that if the facts in this case are ever made public, if the story is ever confirmed, it will not only ruin Mr. Beecher and your wife—of course," said he, "it will ruin them; but it will also ruin you, because the world will never forgive you for having condoned your wife's crime."



Q. Well, Sir; if you recollect anything further at that interview, you will please state it? A. Mr. Woodruff was very emphatic in his prohibition to Mr. Moulton, of what seemed to have been Mr. Moulton's purpose—to publish a card of denial. I do not—I do not remember distinctly how much of the previous interview—how much of the earlier portion of the interview at which I was not present, was communicated to me. I remember most distinctly Mr. Tracy's remarks, because he was, at that time, to me a stranger, or almost entirely a stranger—the upshot of the interview was that—

Mr. Evarts—Well, we do not want the upshot.

The Witness—That nothing could be done except silence.

Q. What reply, if any, did you make to the observation of Mr. Tracy that it would ruin Mr. Beecher, and your wife, and yourself, in case this thing was ever promulgated? A. I told him that I was perfectly well aware that it would be ruin to all parties, and that my great solicitude was the protection of Elizabeth; that as to the other persons in the case, they were both men, and might take their chances. Ruin would not so absolutely ruin them as it would the woman, and my chief anxiety was the protection of Elizabeth's name and fame.

#### MR. TILTON'S DIPLOMACY WITH MRS. HOOKER.

Q. Do you recollect, soon after this, that Mr. Beecher came into your presence, and brought some correspondence—some letters from third persons? A. Yes, Sir.

Q. Do you recollect when it was? A. I am able to identify the date by reference to the proximity of that occurrence to the death, or funeral—I have forgotten which, but either the death or the funeral—of Horace Greeley. It was in the latter end of November, or the beginning of December.

Q. 1872? A. 1872.

Q. Where did the interview take place? A. It took place in the same familiar spot at which most of the interviews were held—that is, in Mr. Moulton's study, in the upper part of his house.

Q. And who were present? A. Henry Ward Beecher, Francis D. Moulton and myself.

Q. And what occurred? A. The substance of what occurred was this: Mr. Beecher brought a number of letters, or, at all events, a handful of writings by his sister, Mrs. Hooker, saying that Mrs. Hooker had threatened to come down to Brooklyn and invade his pulpit—

Mr. Evarts—He said?

Mr. Fullerton—No; Mr. Beecher said, presenting the letters, saying—

Mr. Evarts—That is what I want to know, if the letters said so, or if he said so.

The Witness—Didn't I say that Mr. Beecher said so?

Mr. Evarts—You said, "presented the letters, saying, 'Haven't I a right to know which it is?'"

Mr. Fullerton—And haven't I a right to tell you if you want to know. I can quote his language as well as he can—

Mr. Evarts—I haven't found any fault with his language. I have a right to understand the witness as he goes on. It is a part of my duty.

Judge Neilson—Certainly.

Mr. Evarts—And when a phrase is used that might apply to either speech or letters, I have a right to know which the witness means.

Judge Neilson—I think it was well to have it understood.

Mr. Fullerton—I think there can be no misunderstanding as to the meaning of the term; and I quoted so that he might understand it. The word "saying" don't refer to the letters; it refers to Mr. Beecher.

Mr. Evarts—That is exactly what I asked.

Mr. Fullerton—That is the reason I quote the language, so that you might know.

Mr. Evarts—We won't dispute about it. We have found out now. It is a right I shall exercise.

The Witness—Well, am I to begin again?

Mr. Fullerton—Yes, please.

The Witness—Mr. Beecher came into Moulton's house about the time I have mentioned—I think it was between the death and the burial of Mr. Greeley—saying with a good deal of excitement of manner, and holding out some papers in his hands which he said he had received from his sister, Mrs. Hooker—he said that his sister had threatened to come down to Brooklyn and to invade his pulpit, and to read from the desk a confession of his relations with Mrs. Tilton to the entire congregation, and said he, "What shall I do?" and he showed Mr. Moulton and me the letters. Mr. Moulton read them; I read them. Mr. Beecher said: "What do you think of the condition of a man who gets such letters as this from a member of his own family;" and he expressed profound grief, great agitation, excitement, and he repeatedly asked: "What is to be done. Is there no end of trouble and complication." Mr. Moulton asked me what I thought ought to be done. After some reflection, I said: "Give me the letters, and I will go and see Mrs. Hooker. I will stop this mischief;" and I took the letters, and I saw Mrs. Hooker, and I stopped the mischief.

Q. Nothing occurred in the way of carrying out the threat that was revealed to you there, on the part of Mrs. Hooker? A. No, Sir.

Q. Where did you see Mrs. Hooker? A. I saw her at the residence—I don't know how far your Honor permits me to mention the names of third parties.

Q. No; just say where you saw her. A. I saw her in the city of New-York, at the residence of a friend of hers.

Q. How long after this conversation was it that you saw her?

Mr. Evarts—There is not the least objection to the names being mentioned, so far as we are concerned.

Judge Neilson—You can interrogate, if you think it is proper or necessary.

Mr. Fullerton—I do not think it is necessary. It has no connection with our testimony.

Mr. Evarts—None of our friends—we have no hesitation—

The Witness—I have restrained from mentioning the name solely because it was a lady. I think the names of too many ladies have been brought in this controversy already.

Q. How long was it after the interview that you saw Mrs. Hooker?

FUN FOR THE GALLERY.

Mr. Evarts—Now, if your Honor please, that carries some aspersion upon a lady to say that there was any lady—that the fact that Mrs. Hooker was an inmate of her house assumes an aspersion. Why, you might as well object to saying that she was at the Astor House or anywhere else. No aspersion comes from Mrs. Hooker's being anywhere.

Judge Neilson—No; I don't understand so.

The Witness—I desire to say, your Honor—

Mr. Fullerton—Just one moment, Mr. Tilton.

Judge Neilson—The lady who occupied the house can be named if you require it when you come to cross-examine; it seems to me immaterial.

Mr. Evarts—Very likely it is immaterial; but don't couple it with the question of delicacy as the witness does.

Mr. Beach—No, Sir; he don't.

Mr. Evarts—He said that too many ladies' names had been mentioned already.

Judge Neilson—Well, that was an unnecessary remark.

Mr. Evarts—There have been ladies on the other side, not on our side, that there has been any objection to be made about.

Mr. Beach—That is quite a mistake.

Mr. Fullerton—And a very grave one. The gentleman almost provokes me to say something, probably that he won't relish very much.

Judge Neilson—Don't get provoked.

Mr. Fullerton—No, I will not, only it is well to warn the other side not to open that question. I say it was very proper to withhold that lady's name, not because it was any reproach to Mrs. Hooker or the lady, but because it was entirely unnecessary to mention her name in connection with this controversy.

Mr. Evarts—It was not proper to couple it with the suggestion of delicacy by which other people's names had been omitted.

Mr. Fullerton—Well, it was our delicacy and not yours. [Laughter.]

Mr. Evarts—Your delicacy required those other names to be omitted, but we have no such delicacy in regard to any of ours.

Judge Neilson—The difficulty with the Court, gentlemen, is that you are both right on this occasion. [Renewed laughter.]

Mr. Fullerton—Then that is the first time my friend has gained an advantage.

Mr. Fullerton—How long was that interview with Mrs. Hooker? A. How long was the interview?

Q. Yes. A. I should say, perhaps an hour or more.

Q. Did you see her more than once? A. I saw her only once on that business; I met her at Mr. Greeley's funeral by accident.

Q. Did you communicate to Mr. Beecher the result or substance of the interview that you had with Mrs. Hooker? A. I did, Sir.

Q. How soon after the interview took place? A. Well, I don't know whether it was on that day or the next; it was as soon after as convenient.

Q. Without stating what the interview was, what did Mr.

Beecher say in regard to it? A. I don't remember the phraseology which he used.

Mr. Evarts—How can that be material if we don't know what he was replying to?

Judge Neilson—It might be difficult to understand it, perhaps; we can tell better after we see.

Mr. Fullerton—What was the substance of what he said? A. The substance of what he said was that he was profoundly thankful that he had escaped a great danger which menaced him from a member of his own family.

Q. Now was there any other meeting with Mr. Beecher? A. He made certain other remarks about that member of his family, which I thought ought not to be repeated.

Mr. Fullerton—I don't care for them; I don't ask for them at all. All I want is to get out the material part of the interview.

Mr. Evarts—Well, if your Honor please, we don't like these aspersions. As I have frequently had occasion to say, if topics are not proper to be introduced let them be left out.

Judge Neilson—The counsel has said to the witness that he does not wish to interrogate him on that subject.

Mr. Fullerton—That is just the principle that I wish to adopt.

Mr. Evarts—No; but is accompanied with suggestions that they are suppressed on some ground of delicacy.

Mr. Beach—Well, that is the ground; that is the reason they are suppressed, and we avow it.

Mr. Evarts—That carries an aspersion.

Mr. Beach—Very well, if it does we can't help it; it is true.

Mr. Evarts—You can't help it! If you don't ask for a conversation nothing is said about it. The witness is responsible for giving conversations that you do not ask for.

Mr. Beach—We did ask for it. But this idea that we are to be lectured by the counsel every time we leave out immaterial matter which we think not necessary and which might reflect upon this defendant, we are about tired of. We exercise our right professionally to do that, and when we are called upon we say we do it because we do not wish to state anything unnecessary or offensive.

Mr. Evarts—Then we say that the only proper rule for counsel is to omit the introduction of the evidence, and not to bring it in and suppress it with an aspersion concerning it.

Mr. Beach—Very well, Sir, we will be guided by our own sense of propriety; we ask for a portion of an interview, and we say we omit the rest because we do not want unnecessarily to reflect upon or injure the feelings of anybody.

Mr. Evarts—That is exactly the point.

Mr. Beach—Yes, Sir; that is the point, and if the gentleman has other ideas of professional propriety he can practice them; we will follow our own. [Appl'ause.]

Mr. Evarts—I shall appeal to the Court also. Now, there is no right of counsel to say that he suppresses a statement because it will be injurious to the defendant.

Mr. Beach—I didn't say to the defendant.

Mr. Evarts—It has been said in this very discussion.

Mr. Beach—No, Sir.

Judge Neilson—He did not say injurious to the defendant.



All I could say is, that counsel in examining the witness and calling his attention to an interview, may interrogate him as to so much of that interview as is material to the question being tried, leaving the rest out.

Mr. Evarts—That there is no doubt about.

Judge Neilson—And your position is that it shall be left out without being characterized. Nothing is gained by characterizing it, of course. Proceed, Mr. Fullerton.

#### THE POLICY OF SILENCE ABANDONED.

Mr. Fullerton—It is not a characterization at all. It is simply omitted. [To the witness.] I want to call your attention next to an occurrence after the publication of the Woodhull scandal—some proposition to counteract it. Do you recollect such an interview—such a meeting? A. I do, Sir.

Q. State, if you please, when it took place, as near as you can recollect? A. To the best of my recollection, about a fortnight more or less after my interview with Mrs. Hooker, and the suppression of her attempt, Mr. Beecher came to Mr. Moulton's study, and I was present, and he said that, in his judgment, the time had passed when silence concerning the Woodhull scandal was a wise policy, there was so much clamor on the part of the public as manifested in the press; so much inquiry in his church and congregation; so many demands made upon him by his friends, that the pressure was getting to be unendurable. He said that he thought at that late day, which was five or six weeks after the publication November the 2d—he said he thought that no card of denial would then answer, but that a plan might be devised to explain to the public, to give to the press, what might have been—what the public might regard as the true nucleus of the scandal, and his suggestion was this—I remember he said: "People argue in this way, not that the Woodhull story is true, because its extravagance is against it, but that they naturally say, 'Where there is so much smoke there must be some fire,' and that though that story is not true, nevertheless something must be true; in other words, under the surface of the story which was published there must be something of a black and damnable character. Now," he said, "suppose we should appeal to that sentiment in the community; suppose for instance that some reputable paper speaking semi-officially as authorized by the parties in the case—say THE NEW-YORK TRIBUNE—should publish an editorial to the effect that there was some ground for Mrs. Woodhull's publication;" not the ground which she stated, but that that ground existed in certain stories which Mr. Henry C. Bowen had told a year or two previous against Mr. Beecher and which Mr. Bowen himself had in a written instrument six months before, namely, April 2d, 1872, retracted. "Now," said he, "suppose we get some semi-editorial utterances, not signed by our own names, to that effect, that there was this ground for those stories. Let that be stated and let us cut from the tripartite covenant the section which Mr. Bowen signed, retracting those stories, and let us put that into the newspapers. It will satisfy public curiosity; people will say, 'Well, we always knew there

must be something in the Woodhull story, and now we know what it is; it is a collection of stories which Bowen has told and which Bowen has retracted.'" Mr. Beecher suggested that as a device, in the middle of December, 1872, to meet and counteract the Woodhull tale.

Q. Now, what was said in reply to that suggestion? A. Mr. Beecher asked Mr. Moulton's opinion of it and Mr. Moulton turned and said: "Theodore, what is your opinion." I said: "My opinion of it is that it will be fatal policy." Mr. Beecher asked why. I said: "In the first place, Mr. Bowen did not willingly sign the tripartite covenant, and he has always said since to his friends, making no hesitation in the statement, that he did not retract anything; that that covenant was so loosely drawn that he could drive a coach and four through it; that the retraction was no retraction; that any lawyer could pick it to pieces; that he had signed it at Clafin's request, and that it was no denial practically." I said furthermore that if Mr. Bowen was the same man then that I had known him to be in years previous, and I thought I knew him as well any other man did, for I had served with him fifteen years, I said: "If you drive Mr. Bowen to the wall, and he has got any evidence in his possession against you, he will turn and fight, and he may strike you a death blow before you are aware." I said: "Beware how you put Bowen in a corner unless you are sure that he has got no evidence." Then followed a discussion as to whether Mr. Bowen had any evidence. Mr. Beecher said that Mr. Bowen could not possibly bring any evidence against him of any of the general charges that he had made, and the only danger that he apprehended was that in a certain particular case there might be some scrap of writing; he didn't know whether there was. Then followed an interview, Sir, which I think I have no right to repeat.

Q. No; don't mention that interview. It is an interview with a third person, where Mr. Beecher was not present at all? A. Yes, Sir.

Q. That brings me to December, 1872? A. Pardon me, Sir, we are already in December; that last interview—

Q. Well, that brings me later in December. If you recollect anything else that occurred at that other interview you may mention it. What else occurred at that interview, if there is anything? A. I have my doubts whether I have a right to state it. The substance of it was that a request was made to me by Mr. Beecher to ascertain—

Q. No, I don't want that part of it. If there was anything else, omitting that, you may state what it was? A. No, Sir; nothing else.

Q. I supposed that was all; I will call your attention, then, to a later day in December in which the letter of Mrs. Tilton to Dr. Storrs was under consideration; you recollect such an interview. A. Yes, Sir.

Q. Relate what occurred at that time.

Mr. Evarts—Was Mr. Beecher present?

Mr. Fullerton—Yes, Sir.

The Witness—Toward the close of December I had an interview with Mr. Beecher and Mr. Moulton, at which a discussion was held as to the propriety and feasibility of publishing a statement which I had meanwhile devised with a view to offset

and confront the Woodhull tale. The subsequent stages of that interview I see no way of making plain, except by a narrative of the facts which intervened.

Q. Well, state nothing except when Mr. Beecher was present? A. I told Mr. Beecher that the suggestion which he had made a few weeks before—a few days before, perhaps, a fortnight before—as to introducing the tripartite covenant, or a section of it, into a proposed card to the public, had led me to consider the propriety of publishing, or, at all events, of writing, a story at some considerable length, including that covenant and including certain other documents in the case, all which, taken together, might give to the public some satisfactory solution of the original of the Woodhull scandal without at the same time confessing the whole truth. I told him that his suggestion of publishing a portion of that covenant had inspired me to the preparation of a document, in which the entire covenant should be included, together with other papers. I told him, furthermore, I had consulted on that subject with Rev. Dr. Storrs of this city; that I had gone to him as a good man, a calm man, and a wise man, and had asked him what, in his judgment, the public sentiment of Brooklyn required at my hands in this business, and that Dr. Storrs had advised me to act calmly; to put together the facts, and papers and documents, in the shape in which they could be proved, and then submit them to him, and after I had given him facts in that accurate shape, he would give me the best judgment that he could form. I told Mr. Beecher that, in pursuance of that suggestion I had once or twice seen Dr. Storrs, and that one occasion I had requested Mrs. Tilton to go with me, but she had preferred not to do so, but had written a statement or letter which I had shown to Dr. Storrs; that I had included that letter thus written by Mrs. Tilton to Dr. Storrs—that I had included it in the proposed statement which I meant for the public.

Q. One moment; in this connection I want to prove by you—to identify rather, the paper already in proof: I refer to "Exhibit 57." You may go on with the narrative, then, Mr. Tilton.

Mr. Beach—The last you said was that you had included that letter in your proposed statement? A. Yes, Sir.

Mr. Fullerton—Well, I will ask you this question, did you refer to Elizabeth's letter, dated December 16th, 1872, commencing "In July, 1870, prompted by my duty," &c.; A. Yes, Sir; that is the letter.

Q. Very well, that identifies it? A. Mr. Beecher uttered an exclamation somewhat to this effect—I think, in these identical words, "Oh! Theodore, of all men in the world I wish you had kept clear of Dr. Storrs." I told him that I had gone to Dr. Storrs, because I thought that no man in the city of Brooklyn more thoroughly understood the sentiment of the Christian community here, and that he had never been an intimate friend of mine, and that I could get from him not partisan advice, but cool judgment. And I said, furthermore, "Why should you object to my having gone to Dr. Storrs? I have always supposed that for twenty-five years he had been one of your most intimate friends." "Ah," said he, "that is the reason why I object to your going to him; I shall never

be able to meet Dr. Storrs again on that account." Mr. Moulton asked me to read to Mr. Beecher the proposed document. I told him that it was not completed; that it was completed to this extent—the framework of it was written, but that it included documents, and wherever a document was to be inserted, as I didn't have the originals, and, in some cases, not the copies, I could not give him a very clear idea of the document itself. I said: "For instance, I have no copy of the tripartite covenant; that I must get from Mr. Claflin; but," I said, "I will read to you a part of it, and if you can stand that, you can stand the rest." So I took from my pocket the original letter of Mrs. Tilton, a copy of which I expected to embody with the covenant, and I read that to Mr. Beecher, and after I read it to him he turned to Mr. Moulton and he said, "This will kill me; you need not read any more," and I instantly determined not to print the document; not to publish it. That was between Christmas and New Year's; I think it was the day after Christmas; that is my impression now. I went home that night and I prepared, in conjunction with Mrs. Tilton, a little card, reading it to her—a card subsequently known as the "Letter to a Complaining Friend." That was published, I think, on the 27th of December. Greatly to my chagrin, it had some ugly comments prefixed to it in *The Brooklyn Eagle*. Mrs. Tilton, who had joined with me in approving the card—

Mr. Evarts—Well—

Mr. Fullerton—Omit that, Mr. Tilton. If Mr. Beecher said anything in regard to that letter or card.

The Witness—I told him the reason why I had published it, thinking that it would conduce to peace, but that Mrs. Tilton had been so greatly disturbed by the comments which that card elicited, that she asked me whether it would not be possible to deny the whole story out and out. And she suggested, and this I communicated to Mr. Beecher, that the true policy ought to have been in the beginning to have denied the story; that we were all foolish for not having denied it; and that, though time had elapsed, it was not yet too late to deny it; and she wanted to write a denial on her own account, and wanted Mr. Beecher to co-operate in that denial. I told her that anything that she wanted done she might do on her own responsibility; and, I think, on the 28th of December—

Mr. Evarts—You related all this to Mr. Beecher as what you had told her?

The Witness—Yes, Sir; on the 28th or 29th of December she wrote a card which I produced to Mr. Beecher; and in producing it I said to him that it was her request that he should write a similar card of denial; this interview was at Mr. Moulton's house; I think on the last day of the year, or one of the last days of the year, very near the last day of the year; and Mr. Beecher said that if I would never turn back upon him he would join with Mrs. Tilton in making a denial. "But," said he, "it will be idle for me to deny this story leaving you at liberty at any time to publish my letter to you through Mr. Moulton; but," said he, "if you will give me your word of honor that you will never, under any circumstances, make my denial of no effect, I will join in such a card." I told him that he might never—that he never would have anything to fear from



me, except he himself should become the aggressor; and that then I should defend myself at all hazards; but that if the peace was to be kept it was in his power to keep it. Mr. Beecher then sat at Mr. Moulton's table and wrote a card; and after he wrote it he dictated it to me; and I have a phonographic copy of it. I have never seen it in print—

Mr. Fullerton—[To the defendant's counsel]: You have the original of it?

The Witness—It was a card, the object of which—

Mr. Fullerton—No; I will put it in evidence.

Mr. Shearman—[Searching among papers.] Suppose you read a few lines.

Mr. Beach—No, no; we call for that card.

Mr. Shearman—That is all; I just want to identify it.

Mr. Beach—You know what card I mean.

Mr. Shearman—I do not; I know I have some, of course.

Mr. Beach—Well, it is a card Mr. Beecher wrote—

Mr. Shearman—We do not know at all whether it is the same thing. I do not know about his notes.

Mr. Beach—Mr. Beecher knows what card he prepared.

Mr. Morris—Let us have the paper and we will tell whether it is the one we want.

Mr. Beach—It is no question of Mr. Tilton's notes; we call on you for an original paper.

Mr. Evarts—We want to know what the paper is which you ask.

Mr. Fullerton—It was a denial prepared by Mr. Beecher at that time, and exists still, I believe, in your possession, in his handwriting.

Mr. Morris—That is what we want—you know what we want Mr. Shearman.

Judge Neilson—If the witness can read the first line and the last line, would that not assist in identifying it?

Mr. Fullerton—There is but one paper of that character, and it was prepared at that time.

The Witness—It was offered here in court the other day.

Mr. Fullerton—It is here, and reference was had to it.

Mr. Beach—The witness can soon tell whether that is the paper or not.

The Witness [To Mr. Beach]—Let me read this to you.

Mr. Beach—Oh! no. [To defendant's counsel.] This is not the one, gentlemen. [To the witness] Did you look on the inside?

[The witness here compared his shorthand copy of the letter and the letter itself, with THE TRIBUNE stenographer.]

Mr. Fullerton—Is that the paper? A. That is the paper.

Mr. Fullerton—When I said, your Honor, it was not the paper, I didn't observe that there were two documents upon one sheet. The inside of the paper I had not seen. I now offer it in evidence [reading]:

BROOKLYN, December 29th, 1872.

I solemnly deny the scandalous charges made against me and Mrs. Elizabeth R. Tilton. Especially and emphatically I deny that there has been any criminal intercourse, or any color of a reason for such a charge. My acquaintance with Mrs. Tilton has inspired me with the highest esteem for her modesty, propriety and womanly graces. I authorize her or her husband and children, to make use of this dec-

laration, and I desire to state, in addition, that Mr. Tilton, during the whole of this shameful scandal has uniformly spoken in the highest terms of his wife, and has shown to me the highest proofs of friendship.

(Signed) HENRY WARD BEECHER.

The Witness—The expression I have here is, "her modesty, propriety and womanly graces."

Mr. Evarts—No matter about your comments.

The Witness—[To Mr. Fullerton.] I don't think you read that correct. I recognize the error because Mr. Beecher put in that phrase about Mrs. Tilton at my request, and I was the author of that sentence, and would like to have it read correctly.

Mr. Beach—State your correction.

Mr. Evarts—No; you cannot correct an original paper by a copy.

Judge Neilson—The suggestion was that, perhaps, it had not been read correctly.

The Witness—That is a mistake.

Mr. Fullerton—I read it correctly, then?

The Witness—Yes, Sir.

[Paper marked "Exhibit No. 74."]

Mr. Fullerton—Go on with the narration as to what occurred at the time of the preparation of that letter just read.

Mr. Evarts—Mr. Fullerton, was Mr. Moulton present at this time?

Mr. Fullerton—[To the witness.] You may answer that question.

The Witness—Mr. Moulton was present at the early part of this interview; he was very busy that morning, and said that he would have to leave us. Mr. Beecher sat at the table and wrote this card, and prefixed to it a little private note to Mr. Moulton, which he had not read, and of which I have a copy, however, the object of which was to form part of the card. The two notes together were to form part of the same card.

Q. It appears on the same sheet there? A. Yes, Sir. Read it.

Mr. Fullerton—I read that note in evidence [reading]:

MY DEAR MOULTON: I promptly comply with your suggestion of giving an explicit denial of the stories which connect my name criminally with Mrs. Tilton. The very thought of being obliged to say anything to clear her fair name shocks me, and I have hitherto acted under advice in refraining.

Very truly yours,

(Signed) HENRY WARD BEECHER.

The Witness—After Mr. Beecher wrote his card he asked me—

Mr. Evarts—This card?

Mr. Fullerton—This paper just read.

The Witness—After Mr. Beecher wrote that paper, two notes, he asked me if I thought it would be satisfactory. I told him I would rather have Mrs. Tilton's opinion on the subject, and I would send for her. It happened that just at that time Frank Carpenter called at the house, and I requested him, as a favor, to go to my house and bring Mrs. Tilton. Mr. Carpenter went around to my house and brought Mrs. Tilton to that interview. This card was read to her, and it was entirely satisfactory to her. Mr. Moulton was absent; he had gone to the river front. Mr. Beecher said he would take the card which he

had written, and would consider it during the day. In the evening I asked Mr. Moulton if he had seen Mr. Beecher, and what had come of the card. He said he had not seen Mr. Beecher, and had heard nothing of him. I made another and similar inquiry the next day, and the next, but nothing ever came of the card. It was not published.

Q. State whether Mrs. Tilton prepared a card at that time? A. She prepared a card the day before, which I brought out that morning and exhibited to Mr. Beecher, as being Mrs. Tilton's wish—that card is already in evidence—and said that Mrs. Tilton's desire was that Mr. Beecher should prepare a companion piece to that card, so that hers and his might be published, but neither was published.

Q. [Handing paper to witness.] Look at that paper, marked "Exhibit D 44," and say whether it is the card prepared by Mrs. Tilton? A. Yes, Sir.

Q. Which you brought and exhibited to Mr. Beecher? A. Yes, Sir.

Q. Now, if anything was said upon that occasion as to your joining in such a card. I want you to state what it was? A. Nothing was said to me about my joining in such a card. Mr. Beecher said to me, in going away, that there was only one danger in publishing his card, which was, that on some future occasion, if he and I should be at disagreement, and I should publish his letter from me to Mr. Moulton—

Mr. Everts—That you have just stated.

Mr. Beach—Go on.

The Witness—That his card would put him at a disadvantage before the public, because it would convict him, not only of his original crime, but of his subsequent lie to hide it.

Q. Did you say anything to them about publishing this card on their own responsibility and not upon yours, and, if so, what was it? A. I said I was perfectly willing they should publish that card, and I told Mr. Beecher that the only possibility of his ever coming into collision with me, or of my ever coming into collision with him, would be in consequence of some injustice; that I should never lift my hand against him except in self-defense, and that if he should refrain from striking me I would never do him any harm.

Q. When was this letter to "A Complaining Friend" published? A. I think it was published on the 26th or 27th or 28th of December, somewhere in that week. The letter itself is dated and will be authority.

Q. Will you state what Mr. Beecher said in regard to the letter? A. He told me he thought it was a very injudicious statement, that it would excite the very comment which I had expected it to quell.

Q. What was the occasion for the difficulty at that time which called forth the letter to "A Complaining Friend"? A. Why, Sir, during that month of December, 1872, the public pressure put upon me to do something in regard to Mrs. Woodhull's story was utterly beyond the power of any language to describe. Every newspaper throughout the land was demanding that some explanation should be made—demanding that Mr. Beecher should make it, demanding that Mr. Bowen should make it, demanding that I should make it, demanding that we all should make it, and there was a pressure in the City of

Brooklyn, and there was a pressure in the church and everywhere—the very air seemed to rest upon us.

Q. What did Mr. Beecher say in regard to that state of things, as to the necessity of doing something? A. I have already mentioned that about a fortnight before the interview I have just given Mr. Beecher had devised, as a plan of meeting it, that we should cut the tripartite covenant in two and take out Mr. Bowen's part and charge him with all the slander, and make him bear the burden of retracting it.

Q. And this letter to "A Complaining Friend" succeeded that? A. Yes, Sir; about ten or fifteen days.

Q. And arose out of the same emergency? A. Yes, Sir. I will also say that during that month of December I prepared another statement, the long document, which has become technically styled, I don't know why, "The True Story," for it was not a true story, it was a false one, as Mr. Beecher said he could not bear the publication of that, that it would kill him, and as the card to "The Complaining Friend," as he expressed it, only caused the very comment which I sought to quell, I prepared another statement—a brief letter to a friend out West, I think—yes, Sir; it has been read in evidence. It bore date, I believe, on the very next day, perhaps the very last day of the year, or, at all events, it was written with a view to herald in the New Year season. There were a dozen different devices—some by Mr. Moulton, some by Mr. Beecher, and some by me—in that month.

Mr. Everts—This general interview we must object to; I ask that that be struck out. He says there were a dozen devices.

Judge Neilson—That may be struck out.

Mr. Fullerton—I will put something better in its place.

Mr. Fullerton—I want to ask you whether this story entitled the "True Story," and the letter to "A Complaining Friend," and the letter out West, as it may be known, were all prepared during this emergency that you speak of, growing out of the pressure brought to bear upon you in regard to this scandal? A. Yes, Sir; they were all written within ten or fifteen days when the whole community was hounding us to make some explanation, and we were seeking to make some explanation which would not utterly destroy us all.

Q. I want to call your attention to the publication of the letter to Mr. Bowen which you prepared, January 1st, 1871, in *The Brooklyn Eagle*, I think it was, or *The Brooklyn Sunday Press*, whatever its name is.

Judge Neilson—I think we had no *Sunday Press* at that time.

Mr. Shearman—1873.

Mr. Morris—*Sunday Press*?

Mr. Fullerton—*Sunday Press*.

The Witness—That letter was published in the *Brooklyn Sunday Press* in April, 1873.

Mr. Morris—April 20th?

The Witness—April 20th.

Mr. Fullerton—That is in evidence.

Mr. Morris—Yes; that letter is in evidence.

Mr. Fullerton—How long after its publication did you see it? A. I saw it the next night in *The Brooklyn Eagle*.



Q. Did you take the paper at the time? A. *The Sunday Press*?

Q. Yes, Sir? A. No, Sir; I don't think I ever saw the copy.

Q. Did you see the copy with the paper published in it? A. No, Sir.

Q. Who drew your attention to it? A. I saw it in *The Eagle* the following night.

Q. It was extracted in *The Brooklyn Eagle*? A. Yes, Sir.

Q. And there is where you saw it? A. Yes, Sir.

Q. What connection had you with the publication of that letter? A. None whatever.

Q. Do you know of your own knowledge how it got in the paper? A. Yes, Sir.

Q. Of your own knowledge? A. Not of my own knowledge, except that so far as the gentlemen are here present who published it, and they told me.

Q. I will ask a broader question. Had you any connection, directly or indirectly, with the publication of that letter? A. Not a particle.

Q. Had you any knowledge that it was to be published, before it was published? A. None whatever.

Q. Any intimation that it was to be published? A. None.

Q. Or suspicion that it was to be published? A. None.

Mr. Fullerton—Well, I guess that covers the ground. Now, was there a proposed card after the publication of that letter? A. I proposed then a form of card for Mr. Beecher to publish, based upon his proposed form of the preceding November, but I don't think it was brought to Mr. Beecher's attention at all by Mr. Moulton. I drafted it, and showed it to Mr. Moulton, and I think that it was the end of it.

#### THE TRIPARTITE COVENANT.

Q. I then pass to the month of May, 1873. I believe the tripartite agreement was then published, was it not? A. Yes, Sir.

Q. What occurred after the publication of that tripartite agreement? In the first place I will ask you if you had any connection with the publication of it? A. No, Sir.

Q. Were you connected, directly or indirectly, with its publication? A. No, Sir.

Q. Did you know that it was to be published? A. I did not.

Q. Now, what occurred after its publication? A. You mean what occurred between Mr. Beecher and me?

Q. Yes, Sir. A. The tripartite covenant was published on the morning of Dedication Day, Friday, May 30th, 1873, and published with a prefix attached, signed "Suffolk," written by Samuel Wilkeson, Mr. Beecher's business partner.

Mr. Evarts—You don't know about that. You were asked what it was signed.

The Witness—It was signed "Suffolk."

Mr. Evarts—It is no matter who wrote it.

The Witness—And the explanation given why it was published was that Mr. Bowen, who had the year previous retracted those stories, was still repeating them.

Mr. Evarts—You mean in the paper?

The Witness—An explanation was given in the paper; yes, Sir—the prefatory note signed "Suffolk."

Judge Neilson—That speaks for itself, Mr. Tilton. We always take the paper.

The Witness—Yes, Sir.

Mr. Fullerton—Have you got that letter signed "Suffolk"? A. No, Sir; I am not my brother's keeper.

Q. You may go on and state what occurred between you and Mr. Beecher in reference to it? A. The tripartite covenant being in the journals of Friday morning, May 30th, 1873, was accompanied with comments in many cases to this effect, namely, that there was evidence that Mr. Bowen and Mr. Tilton had committed some nameless and horrible crime against Mr. Beecher, for which he had graciously pardoned us, but that in so doing he had committed an offense against society, that instead of pardoning us he should have had us brought into the Courts of Justice and had us punished for slander and sent to jail.

Mr. Evarts—Is this what you said to Mr. Beecher? A. No, Sir.

Mr. Evarts—This is part of a newspaper.

Mr. Beach—It is part of surrounding circumstances.

Mr. Evarts—That must be struck out. The question was a very proper one—what passed between himself and Mr. Beecher.

Mr. Fullerton—And he how states what passed, which is proper.

Judge Neilson—It may be struck out.

Mr. Fullerton—Yes, Sir; I will put it in in another place.

Mr. Fullerton—What occurred between you and Mr. Beecher? A. I went around to Mr. Moulton's house on the next morning, and I told Mr. Beecher then that I had on the previous evening consulted with some of my friends in New-York.

Mr. Evarts—Was Mr. Beecher there? A. Mr. Beecher came there in a few minutes, for we sent for him.

Mr. Fullerton—Commence the narration when he got there? A. Mr. Beecher was sent for. Mr. Moulton had some conversation with me regarding the publication of this tripartite covenant. Mr. Moulton characterized it as an act of bad faith, because the tripartite covenant had been the joint property of the three signers—Mr. Bowen, Mr. Beecher and myself—and that neither one of those signers had a right to publish it without the consent of both of the others; that it had been published in an unwarrantable way, and that the criticisms it had produced were of such a character that no man could be expected to bear them and not make answer. I told Mr. Beecher that the comments which that publication had elicited in one day made it necessary that there should be a prompt and emphatic disclaimer either by him or by me, I didn't care which, of any such intimation as that I had committed against him a crime, when he knew that it was he who had committed against me a crime. I told him I would not permit the public press to put me in the position of having been pardoned by him for some atrocity, which was all the greater in the public imagination because it was not named, and that he must correct, or that I would, the impression which that publication produced. I told him that I had, in consultation with friends

on the previous evening, resolved on my method of preventing it, if my method was to be adopted, and that method would be to publish in a brief card Mr. Beecher's letter, now known as the letter of contrition, dated Jan. 1, 1871, with a comment appended; that the public would see from the above card whether I had committed a crime against Mr. Beecher, or Mr. Beecher had committed a crime against me; but I told him I didn't wish to resort to such a severe method as that, which was the only method I could adopt, if the matter of the correction was left to me. I said that he had better correct it himself; that he could do it in a milder way, without involving such a cost to his feelings. I had prepared a card to that effect for publication in *The Brooklyn Eagle* of that night. Mr. Moulton dissuaded me from publishing it that night, saying: "Give me a little time; let Sunday intervene; it will do on Monday; meanwhile we will have opportunity for reflection." I presented to Mr. Moulton a complete clean draft of a card which I proposed, in case the responsibility of correcting that impression should devolve upon me, in case Mr. Beecher would not accept what I presented to Mr. Moulton—the form of this card I proposed to publish in *The Brooklyn Eagle* on the following Monday: and I left that to be conned over by him, and for Mr. Beecher to discuss it, and for them to come to some conclusion about it, and I left. The next incident in the matter occurred during the evening of that day. I went around to Mr. Moulton's house on Saturday evening. That would be May 1st, 1873. I was going up into the study. Mr. Moulton told me not to go up, for Mr. Beecher was there, and he did not wish us to meet. I remained down stairs. Pretty soon Mr. Moulton came down to me and said that Mr. Beecher was in great despondency, and had proposed, as his method of settling the case, to resign his ministry. Mr. Moulton dictated to me from memory a copy of the letter of resignation which he said Mr. Beecher had on that night brought. Mr. Moulton said to me: "What do you think of that as an expedient?" I said, "You may tell Mr. Beecher if he resigns his ministry in this crisis, flinging back that shadow on my family, I will shoot him on the street." Whether he communicated that to Mr. Beecher or not I don't know.

Q. Is that the proposed card of which you have just spoken? A. Yes; that is it.

Q. The part of it in print; what was it taken from? A. The part in print was taken from *The N. Y. Express*. Whether this identical fragment was taken from *The Express* or not I cannot say. But my impression is that this article appeared in *The Express* of Friday afternoon, and was copied into some of the New-York papers of Saturday morning—I won't be certain of it—or went into *The Brooklyn Eagle*.

Q. At all events it was a commentary of the press upon your attitude? A. Yes, Sir; that is the identical commentary.

Mr. Fullerton—This is "Exhibit No. 25."

Mr. Fullerton—[Handing paper to witness.] Now look at the paper which I show you and tell me what that is. A. This is a copy of a card which I proposed to Mr. Beecher on that occasion to sign, in order to get rid of that one.

Q. In order to get rid of "Exhibit No. 25," you proposed that one in your hand? A. Yes, Sir.

Mr. Fullerton—And that will be marked—

Mr. Evarts—Let us see that.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—That is new.

Mr. Morris—Yes, Sir.

[Paper marked for identification "No. 75."]

Mr. Fullerton—The last paper is marked "Exhibit No. 75." Did Mr. Beecher see this "Exhibit No. 75?" A. Yes, Sir, he must have seen it, because he published the next day almost the identical reproduction of it.

Mr. Evarts—The fact is that he saw it.

Mr. Fullerton—[Handing paper to witness]. Look at "Exhibit No. 27," and say whether it is the card prepared and published by Mr. Beecher in lieu of this—

Mr. Evarts—I don't know anything about that. Let us see. This paper is proved by this witness having been drawn by him, and of course the right to offer it in evidence will depend on its having been submitted to Mr. Beecher, or in some way having received his sanction as part of the transaction. Whenever that is supplied it can be read.

Mr. Fullerton—"Exhibit No. 75" was not published, I believe. What was published? A. What is "Exhibit No. 75?"

Q. The proposed card which has been called to your attention. A. Yes, Sir; it was published the next day, with one or two trifling alterations. The substance of it was published in *The Brooklyn Eagle*, Jan. 2d, 1873.

Mr. Fullerton—That is sufficient now.

Mr. Evarts—We don't think it identifies it. That paper was published, no doubt, and is in proof. This witness drew a card; that might be proper, if he can say it was shown to Mr. Beecher. We don't want an argumentative statement that Mr. Beecher saw it, because he published something different from it, although like it. The question is whether he saw the paper.

Mr. Fullerton—What did you do with "Exhibit No. 75?" A. I will tell you. After Mr. Beecher, on Saturday evening, May 31, 1873, had prepared his letter of resignation, and I had sent him that message through Mr. Moulton, that he must find some other way, I went early next morning, or pretty early the next morning, to Mr. Moulton's house, to see what had been the result of Mr. Beecher's later consultations with Mr. Moulton on that Saturday night after I had left the house, for in leaving I had left them together. Mr. Moulton told me—

Q. No; not unless Mr. Beecher was there. Don't state anything Mr. Moulton told you, unless Mr. Beecher was there. A. I was about to say that he showed me a letter just received from Mr. Beecher.

Q. Is that in evidence? A. Yes, Sir. I asked Mr. Moulton—

Q. [Handing letter to witness.] Is that the letter which he showed you at that time from Mr. Beecher? A. Yes, Sir. I asked Mr. Moulton what Mr. Beecher had resolved upon, whereupon he showed me that letter.

Mr. Morris—"Exhibit No. 26."



Mr. Fullerton—Without relating what occurred between you and Mr. Moulton, tell us what you did with "Exhibit No. 75," the letter addressed to Mr. Kinsella? A. I don't understand any art of answering that question, unless I mention what precedes it, because this hung on a previous occurrence.

Q. After you prepared it, what did you do with it, where did it go, into whose hands did you put it? A. I put it into Mr. Moulton's hands to be communicated to Mr. Beecher.

Mr. Fullerton—That is all I want.

Mr. Beach—That paper he says was published the next day.

The Witness—Yes, Sir.

Judge Neilson—With some trifling alterations.

Mr. Beach—Very well, Sir.

Judge Neilson—The relation and connection of the two papers, we can spell out as well as the witness.

Mr. Fullerton—Then I offer it in evidence.

Judge Neilson—I think you can put it in.

Mr. Evarts—Why didn't you put it in.

Mr. Beach—Because it is the same thing Mr. Beecher reproduced in print the next day.

Mr. Evarts—How do we know it was connected with Mr. Beecher?

Mr. Beach—Because he says it was published.

Mr. Evarts—You can't make an argumentative proposition that Mr. Beecher had copied that from this.

The Witness—Mr. Evarts, I will inform you that Mr. Beecher copied his from mine.

Mr. Evarts—Did he do it in your presence? A. He did not do it in my presence.

Mr. Evarts—Then you cannot testify in regard to it.

Mr. Beach—Unless he knows it from some subsequent interview with Mr. Beecher.

Mr. Evarts—If Mr. Beecher told him he copied it, that brings a recognition of the paper. When you bring that recognition, then you can offer it in evidence.

Mr. Beach—I don't know of any better recognition that can be given of a paper than the fact that it was sent by the draughtsman to Mr. Beecher, and that Mr. Beecher published it *in hæc verba* the next day, with a few trifling alterations. I think that is a pretty substantial recognition of the paper.

Judge Neilson—I think, upon that view, the paper can be put in, as I suggested before.

Mr. Evarts—Your Honor will note my exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton (reading):—

DEAR KINSELLA: I have maintained silence under the continual slanders that have for some time followed me. I do not now propose to defend myself. The recent publication of a document which bears my name among others, was made without consultation with either Theodore Tilton or myself, or our authorization. If that document should lead the public to regard Mr. Tilton as the author of the calumnies to which it alluded, or any other slander against me, it will do him great injustice! Mr. Tilton's course towards me has been that of a man of honor and integrity.

Yours,

HENRY WARD BEECHER.

[Paper heretofore marked for identification No. 75, now marked "Exhibit No. 75"].

Q. Now, who was Mr. Kinsella? A. I don't know, Sir.

Mr. Beach—What was his business and situation? A. Oh! I thought you meant what was his function in this case.

Mr. Fullerton—No.

The Witness—Oh! Kinsella was the editor of *The Brooklyn Eagle*.

Q. In which the publication appeared? A. Yes, Sir. Perhaps I ought to mention. Mr. Fullerton, that the alterations in that card were submitted by Mr. Beecher to me, through Mr. Moulton, before they were made, on Sunday night.

Mr. Evarts—Your Honor has my exception to the reading of this paper.

Judge Neilson—Yes, Sir.

#### MR. TILTON PACIFIES MR. BEECHER.

Q. We will now pass to 1873, Mr. Tilton, the month of June; do you recollect an interview on Sunday night, at Mr. Moulton's house? A. That is the interview that I have just been mentioning, Sir, Sunday night, June 1st, 1873.

Mr. Beach—Upon that night you did not see Mr. Beecher, I believe? A. Mr. Moulton would not permit us to see each other, and kept Mr. Beecher up stairs and me down. He said the two men were not in a frame of mind to meet each other.

Mr. Fullerton—What effect did this card of Mr. Beecher have on himself? A. On Mr. Beecher?

Q. Yes; in what frame of mind was he after its publication?

Judge Neilson—In other words, did you see him again?

Mr. Fullerton—Yes. A. I do not at this moment remember the first day I saw Mr. Beecher after that publication.

Q. Do you recollect anything that occurred about the 10th or 12th of June, soon after? A. The 10th or 12th of June?

Q. Yes; do you recollect sending him something to the church? A. Do you mean a little scrap of paper?

Q. Yes, Sir. A. I don't know that I could fix that little scrap of paper to the 10th or 12th of June. The circumstances, as they lie in my memory, are these: The publication of this little card of the 2d of June, 1873, excited a great deal of comment. Mr. Beecher told me that all his friends were pressing him to know why in the world he had published such a card exonerating me, saying that I was not the author of the scandals, and giving me a good character before the world; he said he had been pestered by his friends to know the reason, and that he was like a lamb in a thicket in the midst of those criticisms, and that the inquiries into the reasons for that card had given him great perplexity. I think he told me also that there was a threat at that time on the part of Mr. West to institute inquiries into the case; at all events Mr. Beecher said to me that the troubles which had grown up in consequence of the publication of that card were so great as to throw him into great depression. He communicated that to me and to Mr. Moulton, and two or three different times during that month of June; and one morning when he was in a particularly low state, so Mr. Moulton informed me, I sent him a little scripture text, a favorite text of his, from which he used to preach in the past days. I wrote it on a scrap of paper and sent it up into his

pulpit—"Grace, mercy and peace,"—and signed my initials to it. He found it in his pulpit when he went to preach. He told me a few days afterwards that there never had been a sunbeam that brought him more brightness than that. He said that my spirit toward him lifted him up or cast him down, and thanked me for it very profusely. But I won't undertake to fix the exact day of that little paper. It did not have any date, only it was in that time of great depression when he was cast down, and Mr. Moulton asked me to lift him up.

#### PLANS FOR EVADING THE WEST CHARGES.

Q. Do you recollect the letter of Mr. West to Mr. Beecher, foreshadowing the charges that he afterwards preferred? A. I do recollect seeing the letter. I think I had never seen it until this legal proceeding, but I remember a letter was sent by Mr. West to Mr. Beecher. Mr. Beecher came round to Mr. Moulton and to me and said that Mr. West had made up his mind to institute charges against me, and Mr. Beecher wanted to know what was the best policy to do—to proceed upon—in reference to that forthcoming inquiry.

Q. What occurred? A. All that occurred was—on my part at least—was simply this, that I did not see how they could make any inquiry unless I consented to go there and be inquired into, and that there could be no investigation of any sort if I kept away; that it would take seven chains to drag me down to the church to that investigation; he might rest assured that no harm would come through me. Then, either Mr. Moulton or I, or Mr. Beecher, I don't know who, suggested that, as a temporary relief, it would be well to treat the charges with some little kindness, not to rebuff them, not to say, "No, we shall never look into these;" but to say, "The time of year is bad; it is June; July is upon us, and the Summer vacation has come. Throw this thing over until the Autumn; give them a half welcome and a half rebuff." That was the policy agreed upon.

Q. Anything said at that time as to whether you were subject to the jurisdiction of the Court, or was that subsequently? A. The West charges occupied the attention of Mr. Moulton and myself at intervals during the Summer. Mr. West made me a visit during the Summer, though I think that was during Mr. Beecher's absence in the country. I don't remember precisely the date of Mr. West's call. I think it was in the early part of August. He came to see me. He was then a stranger to me. I did not know him by sight.

Mr. Evans.—It is no matter what passed between you.

Q. Pass, then, to the month of October, if you please. What occurred then in regard to the West charges? A. At some time in the month of October—I don't remember the date, though the paper itself bears a date—I was waited upon at the office of *The Golden Age*, by Mr. Tallmadge, the clerk of the Examining Committee of Plymouth Church, who presented to me a formal copy of the charges which Mr. West had made against me, to the effect that I had been slandering Mr. Beecher.

Q. Those charges, I believe, that were thus served upon you, are in evidence? A. Yes, Sir, the identical paper.

Q. Look at "Exhibit No. 29," and say whether you recognize it as the charges referred to. [Handing to witness "Exhibit No. 29."] A. This is a printed copy.

Q. Well, there are the originals. [Handing witness papers.] A. That is the paper, Sir,—two papers.

Q. The letter accompanied it also, did it—of Mr. Tallmadge? A. Yes, Sir; both papers—as you see them.

Q. They have been read in evidence. How long after that did you see Mr. Beecher? A. I don't know how many days, but speedily after that. I did not see Mr. Beecher; Mr. Beecher saw me.

Q. Where did he see you? A. At Mr. Moulton's house.

Q. What occurred? A. He wanted to know what we would do in reference to Mr. West's revival of his charges.

Q. State whether the charges were there, and exhibited? A. I do not know whether they were or not.

Q. Do you know whether Mr. Beecher saw them? A. I don't know.

Q. Well, go on with your narration. A. He spoke to me about them. I had received my copy. I don't know whether he had ever seen that identical copy or not.

Q. What occurred there in regard to them? A. He said to me that everything depended on me. I told him if that was true, I could very easily handle the case. I then informed him that Mr. West had visited me during the Summer, and that he had substantially indicated to me, though he did not say it in plain words, that he (Mr. West) had originally instituted these charges against me in June, because he thought I was really guilty of slandering Mr. Beecher; that during the Summer he, Mr. West, had changed his mind on that subject, and had come to the conclusion that Mr. Beecher was the guilty man, but that, having brought his charges before the church in the regular way, he desired that they should be called up in the Autumn, and urged upon me, as a matter of duty and for my own vindication, that I should appear before the church to answer the charges; that in answering them I would throw the blame where it belonged, and clear myself. I told Mr. Beecher that Mr. West was a stranger to me, and that I entered into no obligations with him, and that I had told him very frankly that I had been for nearly four years out of the church, that I had never crossed the threshold of it, never attended services there, never expected to do so so long as I lived, and that nothing would now induce me to return to the church, and least of all would any temptation lure me to go there for the sake of mingling in an investigation into a scandal. I told Mr. Beecher that Mr. West had argued with me about my duty to go, and had said to me that my name was on the roll, and that I was still a member, and that the church had authority over me, and that he, Mr. West, had taken the advice of well-known congregational clergymen, who understood the order and polity of the church, and that when the Autumn came he meant to call up these charges and to assume that I was a member, and to treat with me as a member, and to force me to trial. I told Mr. Beecher that I had informed Mr. West that no powers could force me to trial, that I should take the ground, which was the true ground, that I was not a member of Plymouth Church, that I had informed the pastor to that effect three or four years ago, that I had never been in the church and



was not a member, and that the error was in supposing that the mere fact of the accidental retention of my name on the roll could create a member of a man who had no membership. I told Mr. Beecher that Mr. West pressed me, and said that in a friendly spirit toward me he meant to call up the charge. I told him, however, that Mr. West was guarded in his expression; he would not say absolutely that he believed in Mr. Beecher's guilt, only that if Mr. Beecher was guilty he was acting during the Summer as a guilty man would act, and exactly as an innocent man would not act. I told Mr. Beecher that now that the charges had been presented to me in a regular form, I would assume toward them the same attitude which I had previously announced to him when the first premonitions were given in the month of June and July, that I should stand on my non-membership; that I should say I was out of the church; that the record was wrong; that they should revise the roll. He said to me: "Theodore, if you take that ground all will be safe; but if by any means they can bring you before us for examination everything will be lost." I said, "They cannot carry me before the tribunal of the church without my consent, and I shall never give my consent." I then told Mr. Beecher that he must assist in fighting off Mr. West's charges. He said that the trouble was to deal with those members of the church who took the technical theory that because my name was on the roll and because I had never asked for letters of dismissal, that therefore the church was in duty bound by its own precedents and policy to try me as if I was a member. He said there was a number of gentlemen in the church who took that ground, and that they were the difficult members to deal with; and in view of that difficulty I suggested to Mr. Beecher a form of action to which he approved. That form was this. I said, "Suppose you draft a resolution something like this: '*Resolved*, That as Mr. Theodore Tilton has not been, for four years, a member of this church, that the roll that contains his name be amended in accordance with that fact.'" That was my proposition for satisfying the consciences of those gentlemen who thought I was a member because my name was on the roll. Mr. Beecher approved that proposition, the essence of it being that I was not a member, and that the roll should be amended to recognize that fact. That was the policy that we agreed upon.

Q. Did you write to Mr. Tallmadge? A. I did, Sir.

Q. Is that the letter which you wrote? [Handing witness a paper.] A. That is the letter, Sir.

Q. I offer it in evidence.

Mr. Evarts—That comes under the same objection and under the same rule of admitting it, I suppose, that the charges do?

Judge Neilson—Yes, Sir.

Mr. Evarts—Therefore, if your Honor will only note my objection and my exception to its admission.

Judge Neilson—It comes in collaterally—incidentally.

Mr. Fullerton [reading]:

174 LIVINGSTON STREET, }  
BROOKLYN, October 22d, 1873. }

MR. D. W. TALLMADGE (Clerk):

*My Dear Sir:* I have received from you an official paper addressed to me, as a member of Plymouth Church. Nearly four years ago I terminated my connection with that church, and

am not now a member thereof. Therefore, the document addressed to me in that capacity I cannot receive. To avoid any seeming discourtesy in returning it herewith, I retain it, subject to your discretion. With my best wishes for the prosperity of the church. I remain,

Yours truly,

THEODORE TILTON.

[Marked "Exhibit No. 76."]

Q. Did anything else occur after the proposition of this resolution which you proposed should be adopted? A. After I sent that letter to Mr. Tallmadge I was in at Mr. Moulton's house one morning—I think it was the very day after the letter had been delivered—or if it was not the next day it was very shortly afterwards, and Mr. Beecher came in, and on seeing me he came up to me and caught my hand in both of his, and said: "Theodore, God inspired you to write that letter."

MR. TILTON'S LAST VISIT TO PLYMOUTH CHURCH.

Q. What action did the church take in regard to it? A. On the morning of the 31st October, 1873—I believe I am correct in the date—it was the morning of the day on the evening of which action was to be taken by the church in reference to these charges; on the morning of that day I saw in one of the New-York papers—I forget which—I think *The Sun*—some intimation that the action that night, instead of being in accordance with the bargain made between Mr. Beecher and me, namely, that the roll should be amended in accordance with the fact of my non-membership—I saw an article saying that the action that night was to result in my excommunication from the church, on the ground that charges had been brought against me for slandering the minister; and that when I was cited to appear before the church to answer them, I had, in a mean-spirited way, put in the plea that I was not a member, and had shirked my responsibility, evaded my duty, and in that manner was to be dealt with by the church and to be punished with expulsion. I went around to Mr. Moulton's house and I called his attention to that statement and I asked him to send for Mr. Beecher, which he did. Mr. Beecher came. I called Mr. Beecher's attention to that statement and I asked him what was to be the action that night. I said: "You and I have agreed what the action shall be. I have written a letter to the church saying that I am not a member, but I have written that letter in your interest. I have written that letter for the purpose of fighting off this investigation. I did not write that letter with a view to evade any duty. I am perfectly willing, if you are, to go down to the church and face this investigation. Tell me, what is the action to-night to be, and what is the meaning of this newspaper forth-putting, and threat and premonition that I am to be expelled?" He said he did not know exactly what the action was to be, and he spoke some very severe words against Mr. West, and he said he was in great trouble. I told him I could not afford the risk of any mistake that night; that if this newspaper foreshadowed the true action, namely, that I was to be held up before the public as having made charges against him and as having meanly shrunk away from my duty of answering them by so base a plea as non-

membership, that I never would submit to it. He begged me to consult Mr. Samuel Belcher, a member of the Examining Committee. He said Mr. Belcher could tell me exactly what the action was to be. I told him that I would write to Mr. Belcher. I told him that I would not permit the church to put me on record, for my future to be clouded by, as under any such base insinuation that I was not able to meet any such charges. I left Mr. Beecher, or rather Mr. Beecher left me; he left the house; I went up into the study and I wrote to a member of the Examining Committee, Mr. Samuel E. Belcher, a letter.

Q. Is that the letter you wrote him [handing witness a letter]? A. Yes, Sir; that is the original draft of it; I made a clean copy and carried it over to him, and delivered it into his hand in person.

Q. Go on with the narrative now. A. I carried it over to New-York.

Mr. Evarts—Well, the question whether Mr. Beecher—

Judge Neilson—You delivered it to Mr. Belcher. That is all you can say about it.

Mr. Fullerton—That is all; that is all I propose to have him say now. [To the witness]: Go on with the narration.

A. I delivered it to Mr. Belcher; I then went to my office and I prepared a copy of it which I sent to Mr. Tallmadge, the clerk. The substance of the letter was—

Q. No, never mind that; I will read the thing itself by and bye. When was the action of the church to be had? A. That night.

Q. Did you go to the church that night? A. I did, Sir.

Q. What occurred there? A. I rose and made a speech.

Q. Just tell us from the time you entered the church until you left, what occurred in the presence of Mr. Beecher? A. About eight o'clock I went into the church. The prayer-meeting was in progress. I waited through it to the end. At the end the meeting resolved itself by Congregational custom into a business meeting, and one of the members was appointed Moderator, and the action which had been heralded in the newspapers of that morning was brought forth for consummation.

Mr. Evarts—What took place?

The Witness—In other words, a series of resolutions was read; I cannot repeat them, but the substance was that I had made charges against Mr. Beecher, that I had been summoned to answer for them, and that my answer was, that I was not a member, and therefore dropped my name from the roll; and as soon as I heard that record read I rose to my feet, and I made a brief statement to that congregation to the effect that if I had slandered Mr. Beecher I was there to answer for it to his face; and Mr. Beecher rose and said that he had no charges to make against me. The entire proceedings are given in the chronicles of the day. I won't undertake to repeat the exact words.

Q. Did Mr. Beecher say anything about the letter to Mr. Belcher after that? A. Yes, Sir.

Q. What did he say? A. Mr. Beecher told me that he was

afraid that trouble might arise in view of my letter to Mr. Belcher, not because I had sent it to Mr. Belcher, for he was his friend, but because I had sent a copy of it to Mr. Tallmadge, and he said that he did not then know whether Mr. Tallmadge was inclined to be friendly or hostile to the investigation, but he said he had procured the copy of it and it was in his possession. I do not distinctly remember whether he said Mr. Belcher's copy of it or Mr. Tallmadge's copy of it; at all events he told me that there was no danger of that letter going on the church records.

Mr. Fullerton—I propose to read it now.

Mr. Evarts—The same objection, Sir.

Mr. Fullerton [reading];

BROOKLYN, October 31, 1873.

MR. SAMUEL E. BELCHER,

*My dear Sir:*—As you are a mutual friend of Mr. Beecher and myself, and as you are likewise a member of the Examining Committee of Plymouth Church, now occupied with an unhappy scandal, I desire to put into your hands, to be used publicly or privately at your discretion, the following statement, namely,

I wrote a few days ago to your Committee, stating that I had not for four years held any connection whatever with Plymouth Church, and, therefore, could not with propriety act the part of a member in any proceedings.

But, since writing that note, I learn from the public papers that because my name still appears on the church books, I am therefore still considered a member, sufficiently so at least to be indicted by one of the members for slandering the pastor. A hint is also thrown out that I am thus refusing to submit myself to the church tribunal, in order to escape the responsibility of my slanderous words.

I therefore say, first, I have never spoken against Mr. Beecher falsely; and, second, if either he or the Church Committee shall request me to waive my non-membership and take my position once again, I will do so as a member long enough to appear this evening at the meeting to answer, before the assembled congregation or Committee, the following question, either from Mr. Beecher or the Committee; namely:

"Have you, Theodore Tilton, ever spoken against Henry Ward Beecher, falsely?"

I request you to show this letter to Mr. Beecher before the action of the Committee to-night. Let me add that my explicitness in this matter is solely with a view to protect myself against any unjust suspicion or reflection in future that I have ever sought to evade any just responsibility of mine to Plymouth Church.

I retain a copy of this letter to be used as I shall see fit.

Fraternally yours, THEODORE TILTON.

[Marked "Exhibit No. 77"].

Mr. Fullerton—A motion to adjourn is always in order, I believe.

The Court thereupon adjourned to eleven o'clock on Wednesday morning.



## EIGHTEENTH DAY'S PROCEEDINGS.

## QUESTION AND CROSS-QUESTION TO MR. TILTON.

WHY THE PLAINTIFF WROTE HIS LETTER TO DR. BACON—A PART OF THE FAMOUS CORRESPONDENCE BETWEEN MR. TILTON AND HIS WIFE READ—MR. EVARTS BEGINS THE CROSS-EXAMINATION.

Mr. Tilton's testimony on Wednesday was not starting, but from beginning to end the interest in it was not once allowed to droop. The testimony first adverted to the Congregational Council in 1874, to the time when Mr. Tilton first heard of its organization, and to what followed. The familiar occurrences surrounding the famous Bacon letter were lightly touched upon. It was soon after this that Mr. Tilton last met and spoke to Mr. Beecher. He told Mr. Beecher on that occasion that Dr. Bacon had called him (Mr. Tilton) a knave and a liar and a creature of Mr. Beecher's magnanimity, and added that Mr. Beecher must deny Dr. Bacon's statements or he (Mr. Tilton) would. Mr. Beecher made no reply and went away. Until they met in the court-room, the two men did not again see each other. A letter from Mr. Tilton to Mr. Beecher, dated in May, 1874, was introduced, in which the writer wrote that he had heard from Mr. Carpenter that Mr. Beecher desired to offer Mr. Tilton pecuniary aid. The latter closed by declining money directly or indirectly, and Mr. Fullerton read it with the grieved expression which the writer evidently intended to convey. Another communication, written to Mr. Shearman and other members of Plymouth Church, was read. It contained quotations from the Bacon letter, and said that if it was desired to try Mr. Tilton for the charges against him he would appear at the bar of Plymouth Church and answer them.

This brought the examination to the events connected with the Plymouth Investigation Committee. The witness said that Mrs. Tilton first informed him of the Committee's existence about 10 o'clock one night early in July. The letter of Mr. Beecher appointing the Committee appeared in the newspapers the same week, and Mrs. Tilton left her home on the day when it was published. The examination then went back to the time when Bessie Turner entered Mr. Tilton's house, who knew her as Lizzie McDermott, "a little waif of a thing," as he described her. When asked whether the story about his having acted improperly toward the girl was true or false, the wit-

ness replied emphatically, "Not a word of truth in it, nor a fact for its foundation. Pure fiction." A debate arose regarding the next topic which was about one of the proposed reports of Mr. Tilton to the Investigating Committee. Judge Neilson was at first inclined to rule out the details of the interview at which that report was suggested, as asserted, by Mr. Tracy, but Mr. Fullerton and Mr. Beach brought to bear very strong arguments for its admission, and finally won their point.

Judge Fullerton then announced that the direct examination was ended, with the exception of the reading of some letters written prior to the alleged commission of adultery. These would be read later. Mr. Evarts, who was to conduct the cross-examination, decidedly objected to that arrangement, and he continued to protest, when Mr. Beach explained that the letters bore reference simply to damages. A heated but amusing skirmish of words followed this misunderstanding. Mr. Beach said that counsel for the plaintiff would be obliged to occupy the next few hours in identifying all the letters, three or four hundred in number, and they would introduce afterward the few they desired to read. "You must introduce them before I cross-examine," exclaimed Mr. Evarts, decidedly, emphasizing with equal force every word and syllable. "No, we won't introduce them before you cross-examine," replied Mr. Beach, jerking out each word with a shake of the head. "We'll see," rejoined Mr. Beecher's senior counsel, in a drawling schoolboy fashion, which was exceedingly funny. After Mr. Beach had responded, "We will see," there seemed to be nothing further to say, and Judge Neilson, apparently amused by the quarrel, suggested that there ought to be some way to agree. Mr. Fullerton replied that the plaintiff's counsel had hundreds of letters, but only wished to introduce about a score of them. There was a momentary pause, both sides being stubborn and determined not to compromise. Then Mr. Evarts said, with a yawn, "Well, gentlemen, we've nothing to do with your case."

"Thank you for that," retorted Mr. Fullerton, shortly, while Mr. Beach added, "We've considerable to do with yours."

This provoked the first laughter of the day, in which all the counsel joined. It was finally agreed to adjourn until 2 o'clock, it being then about 12:30.

After recess, the direct examination was continued. Mr. Tilton said that during his lecturing tours he wrote to his wife every day, and she wrote to him

as often. About 20 of the letters, written in 1867 and 1868, were then read by Mr. Fullerton. They are the poetical letters of love between the plaintiff and his wife which have been so much commented on, and Mr. Fullerton threw into the reading of them much sympathy and fervor. The direct examination was concluded without further questioning at 3:05.

Interesting as had been the morning session, it was reserved for later hours of the day to develop one of the most striking features of the trial—the cross-examination of Theodore Tilton by William M. Evarts. Mr. Evarts arose slowly from his seat, and without formality put his first question, while Mr. Tilton changed his position and answered it with composure. The questioning was unbroken by any misunderstanding until Mr. Tilton was asked whether Mrs. Tilton's residence had been at Mr. Ovington's since she separated from him. He declined to say that it had been, and finally said, "Her residence is at my house." Then Mr. Evarts asked the witness what he meant when he said that his age was about 39, to which Mr. Tilton replied that he meant exactly what he said. After this there were frequent sharp exchanges of words between the examiner and the plaintiff, but always in good nature, Mr. Evarts being invariably suave and Mr. Tilton extremely dignified. Mr. Tilton did not lose an opportunity to praise his wife, and once when asked whether she enjoyed and sought the company of people with great minds, he replied, "No; she rather went to the lowly and unfortunate. She was a lovely woman." "I agree with you," commented Mr. Evarts.

Mr. Tilton's religious views were next inquired about. Mr. Evarts examined him closely on that subject, as to whether Mr. Tilton's change in belief had caused his wife much sorrow, and whether there was also a great difference in the religious views of Mr. Tilton and Mr. Beecher. The political controversies between the two men were next taken up, and the events following the Cleveland Convention, when Mr. Tilton severely attacked Mr. Beecher, were reviewed. Before this subject was exhausted the hour of adjournment arrived and the examination was abruptly broken off.

### THE PROCEEDINGS—VERBATIM.

#### THE COMMOTION MADE BY THE COUNCIL.

The Court met at 11 a. m., pursuant to adjournment.

Theodore Tilton was called, and the direct examination continued.

Mr. Fullerton—Mr. Tilton, when did you first hear of the proposed Council of the church? A. I think, Sir, that the first intimation that I had that a Council was likely to be held was given to me by Mr. Beecher, at Mr. Moulton's house, one Sunday afternoon; I think the second Sunday after my appearance in Plymouth Church at which I made the speech. The date, therefore, was in the early part of November.

Q. 1873? A. 1873.

Q. Now detail, as near as you can recollect, the conversation that you had with Mr. Beecher at that time? A. I stepped into Mr. Moulton's house one Sunday afternoon, and Mr. Beecher was there, and he said to me that trouble had arisen out of my speech at the church, and out of the action of the church in particular reference to Mr. Halliday's card. Mr. Halliday had published a card as clerk of the church certifying that my retirement from the church and the erasure of my name from the roll was without reflection upon me. That card had been printed in *The Sun*. Mr. Beecher said that a good deal of comment had been made by that card, mischievous comment in ecclesiastical circles; that some of the neighboring churches, and I think he said in particular Dr. Storrs's church and Mr. Buddington's church, or leading members of those two churches, were taking the ground that it was against the Congregational order that a member should be dismissed as I was, while charges were pending against me, and still be allowed to carry off from the clerk of the church a certificate that it was without reflection. He said he thought mischief would grow out of it, and that intimations had been given to him that a Council would be held. I think also he told me that certain papers had been sent to him introductory to that end, namely, the holding of a Council. On second thought, I now do remember he spoke of papers, and told me that while he could not state their contents exactly, if I would go and see Mr. Halliday I would be able to judge for myself the danger which then threatened.

Q. Did he make any observation at that time in respect of your joint action with reference to that proposed Council? A. Yes, Sir.

Q. What did he say upon that subject? A. He told me that a Council was always a dangerous thing; that nobody ever could tell where such a body would end, what proceedings they would resort to, what the issue would be; and he asked me if I had any advice or suggestions to give in the matter. I told him that I was not an ecclesiast and knew nothing about the management of Councils. He then said, as near as I can recollect his words: "Theodore, all will depend on you in this case, as in other cases; if you will stand by me, if you will not turn against me, if you will not lend any influence to an investigation or to a Council, Dr. Storrs can do me no harm." I told him that I should lend myself not at all to any investigation, or any Council, or to any such proceedings—he might rest assured of that.

Q. Well, was the Council called? A. The Council was not called at that time.

Q. Afterwards I mean—was it afterwards called? A. Yes, Sir.

Q. And after it convened did you have any conversation with



Mr. Beecher in regard to it? A. The only conversation that I now distinctly recall with Mr. Beecher subsequent to the interview which I have related occurred one night in the street. It comes to me at this moment. If you will wait a moment I will endeavor to fix the time. It was on the night when Mr. Beecher made in Plymouth Church a speech referring to Dr. Storrs, saying that he was sorry that Dr. Storrs's ability and his great genius were not appreciated, that he ought to have been brought up in the West. It was on that night. Mr. Moulton and I were anxious to know the result of the church meeting that night.

It was one of the preliminary pieces of business before the calling of the Council. I was particularly solicitous to know what the church was going to do in reference to an invitation from the two sister churches to meet in Plymouth Church lecture-room and have a friendly talk as to the action taken in my case. I went down with Mr. Moulton to the prayer meeting; I did not go in, but I waited until it was over; Mr. Moulton and I both waited, anxious to know what action the church had taken or would take. Mr. Beecher met us, and said to Mr. Moulton: "I am all in a dripping sweat. I have just been making the greatest speech of my life. My church will do just exactly as I say. We are going to stand on an independent basis. We can whisk the Council down the wind. We can set them all agog." He then turned around and recognized me. This was in the dark, and he told me the substance of what he had said; he said he had never been so roused in any public speech in his life. He was quivering from head to foot, and he would have to stand against an iron railing or lamp-post to steady himself. I thought he was going to fall in the street. He told me he thought the danger was past; that the church would do exactly as he wished.

Q. When, in reference to this event that you now speak of, was the Bacon letter published? A. Oh, the Bacon letter was not published until June, 1874.

Q. After its publication did you call the attention of Mr. Beecher to it? A. No, Sir; I never met Mr. Beecher since the Bacon letter, save as I have met him here in the court-room.

#### MR. TILTON'S LAST WORDS WITH MR. BEECHER.

Q. Did you ever have any talk with Mr. Beecher in regard to the Bacon letter? A. I had a talk with Mr. Beecher, not in regard to the Bacon letter, but in regard to the charges which Dr. Bacon had made.

Q. I did not frame my question as I meant to have done. With regard to the charges referred to in the Bacon letter, I should have said? A. Yes, Sir.

Q. When was that conversation? A. I cannot fix the precise date, but it was an interview held in Mr. Moulton's study, I think about the middle of April, 1874, just after the Council.

Q. And what part of the charges of Dr. Bacon against you did you call the attention of Mr. Beecher to? A. Dr. Bacon had charged me with being a knave and a dog.

Q. What did you say to Mr. Beecher upon that subject? A. I told Mr. Beecher that that was a very grave charge to come from Dr. Bacon, the leading Congregational clergyman of New-England, my former senior editor of *The Independent*; that it

might as well be made against me by Mr. Sumner; that I could not sit still under any such imputation, and I said: "Mr. Beecher, you must correct this or else I shall be compelled to do so. You may correct it in your own way, in any mild and gentle way. If it is left to me to correct, I must do it in a more serious way." He said to me on that occasion, or rather I said to him on that occasion: "I am not willing, Mr. Beecher, to be put before the world as the creature of your magnanimity, whereas you know that you are the creature of mine." Perhaps I ought to say, to make that entirely clear, that this was an interview which I had with Mr. Beecher, to which I had summoned him, in order that he might be present when Mr. Thomas G. Shearman presented to me his written apology for having insulted Mrs. Tilton in public, at the Plymouth prayer meeting.

Mr. Evarts—We will have that stricken out.

Judge Neilson—Strike it out, unless the counsel require it.

Mr. Fullerton—It is immaterial.

Mr. Beach—I do not want to strike out the fact. I suppose that he had summoned Mr. Beecher to that interview.

Judge Neilson—No, Sir; from that.

Mr. Fullerton—You recollect anything else that occurred at that interview? A. I recollect my talking with Mr. Shearman, and my receiving his apology.

Q. I mean with Mr. Beecher? A. No, Sir; Mr. Beecher left, and that is the last time I ever spoke with him.

Mr. Evarts—That will have to be stricken out also.

Judge Neilson—Yes, Sir.

Mr. Beach—No, Sir; not with our consent.

Judge Neilson—The answer will be: "No, Sir; Mr. Beecher left." If the counsel wishes to learn more, he may inquire.

Mr. Evarts—This constitutes a part of the conversation with Mr. Beecher.

Mr. Beach—I understand that Mr. Beecher was present at this interview.

Judge Neilson—Ascertain how that is; ascertain if there was any reference to Mr. Shearman's matter while Mr. Beecher was yet there.

The Witness—Yes, Sir.

Mr. Beach—We do not care about that.

Mr. Fullerton—I don't care about that. The correspondence between Mr. Tilton and Mr. Shearman is already in evidence as a part of the Bacon letter.

Judge Neilson—It is as well to leave it there.

Mr. Fullerton—What reply, if any, did Mr. Beecher make to the suggestion that that must be corrected, either by himself or you? A. Mr. Beecher made no reply whatever, from being restrained by Mr. Shearman's presence, who had not yet learned the facts in the case.

Mr. Evarts—That is not evidence.

Judge Neilson—The word "restrained" is not.

Mr. Beach—Was Mr. Shearman then present?

The Witness—Mr. Shearman was then present.

Judge Neilson—Mr. Shearman just then came in, did he? A. No, Sir.

Judge Neilson—He was in? A. Mr. Beecher was summoned to that interview to be present by previous arrangement.

Mr. Evarts—That is not evidence.

Judge Neilson—That we have down.

Mr. Beach—I don't know whether it is evidence or not. He says by previous arrangement. We will see whether it is evidence.

Mr. Evarts—Of course if you had a previous conversation with Mr. Beecher you can give that. I make no objection to anything which Mr. Beecher said.

Judge Neilson—All the counsel now seem to call for, is the conversation with Mr. Beecher.

Mr. Evarts—Now, he says that Mr. Beecher made no reply, and he then proceeds to state, because he was restrained by Mr. Shearman's presence. That is not proper.

Mr. Fullerton—Was Mr. Shearman present during that interview? A. Yes, Sir; that was an interview called for the reception of Mr. Shearman's apology.

Q. Did Mr. Shearman and Mr. Beecher leave together? A. No, Sir; Mr. Shearman remained.

Q. Which left first? A. Mr. Beecher.

Q. Mr. Shearman remained behind with you? A. Yes, Sir.

Q. How was Mr. Beecher summoned there? A. By me.

Q. Through whose instrumentality? A. Through a telegram in Mr. Moulton's house.

Q. Sending a telegram? A. Yes, Sir.

Q. Did you inform him in that telegram—? A. I did not address the telegram to him; Mr. Moulton sent him the telegram.

Q. Was that the last meeting you had with Mr. Beecher? A. Yes, Sir; the last time I ever exchanged a word with him, according to my present recollection.

# MR. BEECHER'S OFFERS OF MONEY FOR THE GENERAL GOOD.

Q. Tell me, if you please, in whose handwriting that letter is? [Handing letter to witness.] A. It is in mine, Sir.

Q. Did you send it to Mr. Beecher? A. I did, Sir.

Mr. Fullerton—The letter is produced by the other side, upon my call, and I offer it in evidence.

Mr. Evarts—This is a letter from Mr. Tilton to Mr. Beecher, received by him, and I suppose is admissible as evidence of that fact, that he wrote such a letter to him. It carries no evidence further than that.

Judge Neilson—No, Sir.

Mr. Evarts—It is not evidence of the truth of it.

Mr. Fullerton [reading]:

THE GOLDEN AGE, May 2d, 1874.

HENRY WARD BEECHER.

SIR: I have just this morning learned, to my surprise and sorrow, that Mr. F. B. Carpenter, whose good will toward both you and me is unquestionable, has consulted you concerning the use of your money, influence and good offices for the enlargement of the capital of *The Golden Age*. Mr. Carpenter mentions to me also your saying to him that, under certain conditions involving certain disavowals by me, a sum of money would, or could, be raised to send me with my family to Europe for a term of years. Of course you need no assurance that such an application or suggestion is wholly unauthorized by me, and is inexpressibly repugnant to my feel-

ings. The occasion compels me to state explicitly that so long as life and self-respect continue to exist together in my breast I shall be debarred from receiving either directly or indirectly any pecuniary or other favor at your hands. The reason for this feeling on my part, you know so well, that I spare you the statement of it.

Truly yours,

THEODORE TILTON.

[Marked "Exhibit 78,"]

Mr. Fullerton—I have called upon my friend Mr. Shearman for a letter of May 4th, and inasmuch as he does not find it at once he consents kindly that I should read it from the book.

Mr. Evarts—It is a letter to the three jointly, is it not? If it was delivered to Mr. Beecher, it will come within the same rule. But if it was delivered only to Mr. Shearman, I don't see that it would. The way a letter comes to be evidence that passes from A. to B., is the fact that B. receives it. No letter proves its contents, but the fact that it comes to a person is the substantive fact. Now, a person by writing a letter to three men and proving that he gave it to one of them, you cannot read it in evidence against the other two, unless they are partners or something of that kind.

Mr. Fullerton—Unless we bring it home to Mr. Beecher's knowledge of course it will go for nothing. That we propose to do.

Judge Neilson—Do you expect to do so?

Mr. Fullerton—Yes, Sir.

Judge Neilson—Go on.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—Yes; it is accepted on the assurance that he expects to bring it home to the knowledge of Mr. Beecher.

Mr. Evarts—There may be some circumstances where it is a matter in of difference, but here is a long letter, to which, perhaps, importance is attached, I dare say—I don't know how that may be—by my learned friends; and it is hardly right, it seems to me, that we should be called upon to submit to the reading of that paper, on some notion that Mr. Beecher has something to do with it, without having the link supplied.

Judge Neilson—I propose in this instance to accept the statement of counsel that he expects to connect it, perhaps by some other witness.

Mr. Fullerton—By some other witness not yet called.

Judge Neilson—I think he may read it on that assurance.

Mr. Evarts—That is no doubt within the discretion of the Court, but we submit it is not a case where that allowance should be permitted. Your Honor will note our exception to the evidence on its face.

Judge Neilson—Yes, Sir.

Mr. Fullerton [Reading]:

BROOKLYN, May 4, 1874.

Rev. Henry Ward Beecher, Pastor of Plymouth Church; Rev. S. B. Halliday, Associate Pastor, and Mr. Thomas G. Shearman, Clerk.

GENTLEMEN: I address, through you, to the Church of which you are officers, the following statement, which you are at liberty to communicate to the Church through the Examining Committee, or in any other mode, private or public.

The Rev. Leonard Bacon, D. D., LL. D., Moderator of the recent Congregational Council, has seen fit, since the adjournment of that body, to proclaim, publicly and reiterate, with signal emphasis, and with the weight of something like official authority, a grave declaration, which I here quote, namely:



"It was for the Plymouth Church," he says, "to vindicate its pastor against a damaging imputation from one of its members. But with great alacrity—the pastor himself consenting—IT THREW AWAY THE OPPORTUNITY OF VINDICATION." \* \* \* "That act," he continued, "in which THE PLYMOUTH CHURCH THREW AWAY THE OPPORTUNITY OF VINDICATING ITS PASTOR, was what gave occasion for remonstrances from neighboring churches." \* \* \* "There are many," he says also, "not only in Brooklyn, but elsewhere, who felt that the Church had not fairly met the question, and by evading the issue had THROWN AWAY THE OPPORTUNITY OF VINDICATING ITS PASTOR."

The Moderator's declaration is thus made three times over that the Plymouth Church, in dealing with my case, THREW AWAY ITS OPPORTUNITY OF VINDICATING THE PASTOR.

This declaration so emphatically repeated by the chief mouthpiece of the Council, and put forth by him apparently as an exposition of the Council's views, compels me, as a third party to the controversy, to choose between two alternatives.

One of these is to remain contentedly in the dishonorable position of a man who denies to his former pastor an opportunity for the vindication of that pastor's character—an offense the more heinous because an unsullied character and reputation are requisites to his sacred office.

The other alternative is for me to restore to his Church their lost opportunity for his vindication by presenting myself voluntarily for the same trial to which the Church would have power to summon me, if I were a member: a suggestion which (judging from my past experience) will subject me afresh to the unjust imputation of reviving a scandal for the suppression of which I have made more sacrifices than all other persons.

Between these two alternatives—which are all that the Moderator leaves to me—and which are both equally repugnant to my feelings—duty requires me to choose the second.

I therefore give you notice that if the Pastor, or the Examining Committee, or the Church as a body, desire to repossess the opportunity which the Moderator laments that you have thrown away, I hereby restore to you this lost opportunity as freely as if you had never parted with it.

I authorize you (if such be your pleasure) to cite me at any time within the next thirty days to appear at the bar of Plymouth Church for trial on the charge heretofore made against me, namely, that of "circulating and promoting scandals derogatory to the Christian integrity of the pastor and injurious to the reputation of the Church."

My only stipulation concerning the trial is that it shall not be held with closed doors, nor in the absence of the pastor.

I regret keenly that the Moderator has imposed on me the necessity for making this communication, for nothing but necessity would extort it.

The practical good which I seek to achieve by this proposition is that whether accepted or declined, it will in either case effectually put an end forever to the Moderator's grave charge that Plymouth Church has been deprived through me of an opportunity to vindicate its pastor, or that its pastor has been by any act of mine deprived of an opportunity to vindicate himself.

Truly yours,

THEODORE TILTON.

[Marked "Exhibit No. 79."]

#### THE CHURCH COMMITTEE AND KINDRED TOPICS.

Q. When did you first hear of the appointment of a Committee of Plymouth Church to inquire into this scandal?

A. I first heard of it one evening, about ten o'clock, from Mrs. Tilton, who had come in—

Q. Well, don't state what she said. Do you know what day of the month it was? A. I think it was in the early part of the

week that began with the 5th, 6th or 7th of July; shortly after the 4th of July; a few days after.

Q. Was the correspondence, at that time, published which called the Committee? A. No, Sir.

Q. It had not yet been published? A. No, Sir.

Q. How long after that event, that is to say, when you first heard that there was a Committee, was that correspondence published? A. Several days afterwards. The correspondence, I remember, which called the Committee into action was published on the 11th of July—Saturday morning, the 11th of July; I believe I am accurate in that date—1874.

Mr. Fullerton—I offer in evidence the correspondence which resulted in the appointment of that Committee [reading]:

BROOKLYN, June 27, 1874.

GENTLEMEN: In the present state of public feeling I owe it to my friends and to the Church and the Society over which I am pastor to have some proper investigation made of the rumors, insinuations or charges made respecting my conduct as compromised by the late publication made by Mr. Tilton. I have thought that both the Church and the Society should be represented; and I take the liberty of asking the following gentlemen to serve in this inquiry and to do that which truth and justice may require; and I beg each of the gentlemen named will consider this as if it had been separately and personally sent to him; namely:

From the Church—Henry W. Sage, Augustus Storrs and Henry M. Cleveland.

From the Society—Horace B. Claffin, John Winslow and S. V. White.

I desire you, when you have satisfied yourselves by an impartial and thorough examination of all sources of evidence, to communicate to the Examining Committee or to the Church such action as they may seem to you right and wise.

HENRY WARD BEECHER.

[Marked "Exhibit No. 80."]

Q. When did you first know of the existence of that letter?

A. I first saw that letter in print on the morning of July the 11th, Saturday, if I am correct as to the date. I saw either that letter or a similar letter in manuscript the night before, in the hands of Mr. Henry M. Cleveland, on the occasion of my first appearance before the Committee, the Committee being then an exclusively private body, its existence not having been heralded to the public.

Q. And when did you first know of the existence of the Committee? A. I first learned of the existence of the Committee in the early part of that week, I think, or several days previous.

Q. How long after the date of this letter, June 27, 1874? A. I think the day on which I learned of the existence of the Committee was possibly July 6th or July 8th, and this letter was dated June 27. It must have been nearly two weeks.

Q. Up to that time had your wife remained under your roof? A. Yes, Sir.

Q. When did she leave? A. She left on the morning of the publication of that correspondence by Mr. Beecher, informing the world that he had appointed a Committee.

Q. That was July the 11th, I understand? A. I believe that was July the 11th.

Q. As near as you can recollect? A. That is the best of my recollection. It was a Saturday morning.

Q. Did she leave with your consent? A. No, Sir.

Q. Against your will? A. She left early in the morning.

Q. How early? A. She did not leave against my will, Sir. No, Sir; because she was a free, sovereign actor in the business. She never did anything against my will. She had a will of her own and acted according to it.

Q. But it was not at your request? A. No, Sir.

Q. Consent? A. It was not with my consent. It was to my great surprise and grief. At the same time I did not undertake to restrain her, Mr. Fullerton. I never applied any coercion to her any way.

Mr. Evarts—Well, the generalities, if your Honor please, are not evidence. I ask that they be struck out.

Judge Neilson—No, they are not—the simple fact that he did not try to restrain her.

Mr. Evarts—That he never applied any coercion to her on any subject, is not evidence.

Q. Now, I want to ask a few miscellaneous questions. Do you recollect the proposed report to the Committee of Investigation that has been put in evidence? A. Well, Sir, there were three or four proposed reports, all of which I believe have been put in evidence, one by Mr. Beecher and two by me.

Q. The one that you prepared for the Committee? A. I prepared two for the Committee.

Q. There is only one in evidence, however? A. Ah! I beg your pardon, Sir.

Q. I limit my question to the proposed report for the Committee, in evidence. Is that the short one or the long one? A. It is the short one.

Q. It is the short one. I want you to state under what circumstances the short report was prepared? A. The circumstances were these. Mrs. Tilton came home one evening, and informed me that she had been down—I beg pardon for not addressing the jury—Mrs. Tilton came home one evening about 10 o'clock and informed me—this was the 6th or 8th of July—informed me that she had been down to a Committee of Plymouth Church, and I asked what committee. She said a Committee to inquire into my letter to Dr. Bacon, to do away with the scandal, and she said that she had denied everything—blotted it all out.

#### AN OLD TECHNICAL QUESTION REVIVED.

Mr. Evarts—If your Honor please, the occasion of his preparing this report may, perhaps, justify an allusion to what passed between him and his wife as the basis of that, but that occasion does not give the right to detail conversations between himself and his wife.

Judge Neilson—So I think, Sir.

Mr. Beach—Well, Sir, this interruption should have come a little earlier, Sir; but if any of it is stricken out, what has been taken in regard wholly to that interview should be stricken out.

Judge Neilson—Well, it fixes the occasion; that is the effect of it.

Mr. Fullerton—It is certainly proper and important that this jury should be informed of the circumstances which led to the preparation of that report, because it cannot be properly understood unless those circumstances are proved.

Judge Neilson—One is the circumstance that she had been before the Committee.

Mr. Fullerton—Yes, Sir; another is that she had informed him that she had denied the whole thing.

Judge Neilson—I don't think you can give that.

Mr. Fullerton—Why, Sir, that is the gist of the whole affair.

Mr. Evarts—That is already in evidence.

Mr. Fullerton—The report was based upon that fact.

Mr. Evarts—That is all in evidence. That I have not objected to. That is an occasion. I don't know, of course, what did pass between this gentleman and his wife afterwards, only it is not a matter that by fixing an occasion by an introduction to the report, gives an opportunity to go on and give a conversation between them.

Judge Neilson—I think not, Sir.

Mr. Evarts—I think it should go no further—that is, no further in respect to the conversation.

Judge Neilson—I think he can say, after giving the conversation, that in consequence of what was said he was led—if that was one of the circumstances that led him—to make the report.

Mr. Fullerton—Then it will not appear that this report was the natural result of what was communicated to him.

Judge Neilson—I think he can say that in consequence of what was communicated to him he was led to the idea of making this report, without giving the conversation; then you have it.

Mr. Fullerton—The report may be a *non sequiter*. It may not be the natural result of the conversation. It may be thus argued. It is certainly proper for us to show the basis of that report, the information that was communicated to him, because if he is to be judged by the act, then, as a matter of course, it ought to be in the light of surrounding circumstances.

Judge Neilson—Yes, Sir; but we cannot take the conversation between them, in my judgment.

Mr. Evarts—The substantive fact that she told him that she had been before the Council and denied all the charges, is already in. That is sufficient foundation, it seems to me.

Judge Neilson—You will agree with the counsel in that, I think.

Mr. Fullerton—How, Sir?

Judge Neilson—The counsel says that the substantive fact that she had been before the Council and denied the charges is already in. That covers the fact.

Mr. Fullerton—No, Sir; not by any means. We either want the whole or none. They cannot wait until a part of it is out and then object to the balance.

Judge Neilson—You cannot take the conversation any further, Sir.

Mr. Fullerton—Then I suppose it all goes out.

Judge Neilson—Oh, no! I think it stands where it is. It appears now that she communicated the fact that she had been before the Committee and denied all the charges.

Mr. Fullerton—Yes, but I want what further she said. I want to show why she denied them, the reasons that she gave for it. Why, it cannot be that this conversation is to be chipped in two suddenly in that way, and the reason that she gave for denying this story before the Committee not given.



Judge Neilson—We cannot take it.

Mr. Beach—Why, your Honor, is it permissible for counsel upon the other side to permit us to examine in regard to a conversation between Mr. Tilton and his wife, and allow them to proceed to a certain stage and then object; and your Honor excludes what follows, and they retain the portion that has been given? Is that possible? If it is improper for us to give the balance of this conversation, it was improper for us to give any of it; but counsel sat quiet while the witness upon the stand was detailing this conversation between himself and his wife, until it reached a particular point where they desired to get the fact that Mrs. Tilton upon that occasion said that she denied before the Committee the whole of the fact, and then object and shut out the answer which Mr. Tilton made to that announcement that she had given the denial. Your Honor surely will not permit that injustice to be practiced. The counsel should have objected the moment we entered upon this conversation if he intended to raise the question of its inadmissibility, and not allow it to proceed to a particular stage where it was favorable to them, and when we ask to give the answer—the explanation on the part of Mr. Tilton—then to exclude that. The whole must be given, or the whole stricken out, I submit to your Honor.

Judge Neilson—It may be hard, Sir, but I think the objection must be sustained at the point where it was made.

Mr. Fullerton—It is not a question of whether the objection should be sustained. The question is whether the whole conversation is to go out, inasmuch as the balance of it—

Judge Neilson—There has been no motion to strike out as yet.

Mr. Fullerton—Why, it is my suggestion, that if they deprive us of the benefit of the whole of the conversation, that the part of it already given in evidence should go out with it.

Mr. Evarts—Do you make a motion to strike it out?

Mr. Fullerton—I make that suggestion to the Court.

Mr. Evarts—Until you make the motion I won't discuss it.

Mr. Beach—Well, we do make the motion, Sir. Your Honor ruling that we can go no further with the conversation, we now move to strike out that which has been given.

Mr. Evarts—To strike out the whole?

Mr. Beach—Yes, Sir.

Mr. Evarts—Now, some criticism has been made on my position. Will the stenographer be so good as to read the question which was asked to this witness?

THE TRIBUNE stenographer read the question as follows: "I want you to state under what circumstances the short report was prepared?"

Mr. Evarts—Now, is there anything in that question that I ought not to have objected to? When my learned friends ask a question of this witness, saying, "State a conversation between yourself and your wife," and I sit still and allow him to go on with the conversation, then it will be time enough to criticise me for stopping him and not letting him go through.

Mr. Beach—Well, that was just the criticism in which I indulged.

Mr. Evarts—I know you did; but your question was not that. Your question was, "Under what circumstances was this paper prepared?" and under that he starts off to give as an inducement to the paper a communication of a situation, before this Committee, of his wife.

Judge Neilson—That was probably directed to the commencement of the circumstances under which the witness prepared it.

Mr. Evarts—Any circumstances. Now, any other circumstances can be given—such as, after that this was done or that was done—that is, if they come from parties that are properly before us. It is not a criticism upon me for allowing a part of the conversation thus asked for. It will be time enough, I say, when a question is asked or a conversation, to say if I will allow a part of it I might allow the whole. But the question was of the circumstances—in respect to an inducement. Then I say, "Do not, under cover of that, go on and narrate a conversation between husband and wife."

Mr. Beach—The issue between us, Sir, cannot be avoided by the gentleman. I say that he sat still while this witness detailed a very considerable part of a conversation between himself and his wife, and that it was the duty of the gentleman, if he intended to object to any part of that interview, to interpose the objection when the narrative on the part of the witness commenced, and that it is unjust and illegal to permit the half of that conversation to be given until it reaches the point so far satisfactory to the counsel upon the other side, and when they apprehend that the remaining portion of it will be unfavorable to their interest, then to shut the mouth of the witness by an objection, I say it is untimely and inadmissible; but if, under the ruling of your Honor, the objection is to be sustained, that the whole conversation should be given—that it cannot thus be mangled and misrepresented—in its true scope and effect to place the party who offers it in a disadvantageous position—if your Honor will permit me, Sir, a moment, I think I can refer to authorities upon the subject. I do not wish to detain the Court, Sir, but I will present it to your Honor hereafter.

Judge Neilson—Well, we will proceed, Mr. Fullerton, reserving this until I can hear the counsel further on the subject; I would be very happy to hear him, of course.

Mr. Fullerton—Your Honor will bear in mind while considering it, that this report was not written because Mrs. Tilton made that declaration (that she denied the whole story), but the report was written and presented for other reasons, which will be manifest when that conversation is divulged. I will pass to another topic. [To the witness.] Did Mr. Beecher ever inform you who published the tripartite agreement? A. I do not remember that the publication of it was made a matter of talk between us, other than that the fact of its publication needed an answer. I know who published it.

Q. Well, did you learn it from him? A. No, Sir.

Q. Or, was it ever spoken of in any conversation between you and him? A. I do not remember that it was. It was published by Mr. Wilkeson and Mr. Cleveland.

Judge Neilson—He did not ask who it was published by.

The Witness—I beg your pardon, Sir.

A LITTLE HISTORY OF BESSIE TURNER.

Q. Mr. Tilton, who was Bessie Turner? A. She was a little girl who came to our house; I cannot well remember how many years ago, under the name of Lizzie McDermott; I should think perhaps—well I should have to guess—a dozen or fifteen years ago. She was a little waif of a thing. If you wish me to state something about her—

Q. Well, under what circumstances did she come in your family; from whence did she come? A. My impression is that, in some way or other, through an old Sunday-school teacher either of myself or of Mrs. Tilton's; indeed I—my present recollection is that Mr. Libby, of the firm of A. T. Stewart & Co., knew something of her. I won't be accurate; I would not undertake to substantiate that, however. She came there through Mrs. Tilton's invitation, I believe, just as it might be given to any servant, any girl—any office boy—came there to help do the work of the house, take care of the children.

Q. And how long did she reside with you? A. I do not know whether she resided continuously at our house until 1870 or not; I think that in the Summer of 1870 she was away in the West at Mrs. Putnam's house, at Marietta, but at all events, the period of her residence at our house must have terminated somewhere in 1870. Then she came back from the West with Mrs. Tilton and was a day or two at the house; and then she was sent off to school by Mr. Beecher.

Q. What time? A. She was sent off two or three weeks after the writing of what is called the letter of contrition.

Q. Did you ever have any conversation with Mr. Beecher in regard to her absence at that time? A. In regard to her absence?

Q. Yes, Sir. A. The only conversation I have ever had with Mr. Beecher on the subject has been from time to time to answer an occasional question whether or not she was prattling or making mischievous talk.

Q. Where was she when those conversations occurred? A. Where was she?

Q. Yes, Sir. A. She was away in Ohio, at school.

Q. At school? Now, who made the arrangements for her departure? A. Mrs. Tilton and Mr. Moulton together.

Q. Do you recollect the time of her leaving? A. I think she left very speedily after Mr. Beecher sent me his letter through Mr. Moulton; some time in January, 1871.

Q. Some time in January, 1871? A. Yes, Sir.

Q. Now, I want to ask you this general question, whether, from first to last, Mr. Beecher ever denied the criminal intercourse with Mrs. Tilton? A. No, Sir. [After a pause.] I would like to amend that answer, Mr. Fullerton, by saying that whenever he spoke of it he always said that the criminality attached to him alone and not to Mrs. Tilton; always insisted that she had not been to blame; he was the person on whom the condemnation should fall.

Mr. Evarts—Well I object to that last, if your Honor please, as not responsive to the question, and if it is intended to draw

it out, to its being made the subject of a question. The question was fully answered; it was a very plain one. It was not whether he had ever denied the criminal intercourse of Mrs. Tilton with him, but whether he had ever denied criminal intercourse of his with Mrs. Tilton, if a distinction is sought to be established.

Mr. Fullerton—It is a proper piece of evidence.

Mr. Evarts—I am not yet through. And, if your Honor please, it is a piece of evidence which if sought to be extracted by a question, I should object to—the question. It is not responsive, and if it is not a proper subject of evidence, why then it must not be introduced. It must be shut out at present and introduced by some question to which I will object. I have a right to object to answers, when they come out not responsive to a question.

The Witness—I would like the—

Mr. Evarts—And the generality of such testimony, of course, is inadmissible. It is inadmissible to say that he always said so and so, because it does not mean what he always said, I suppose, even in that sense. At any rate the proper way is to give evidence of what he said and when he said it, etc., and then we will judge of its connection. I ask your Honor that it should be struck out. If my learned friend thinks he is entitled to draw it in, why, then, let it be drawn in by some question that will raise the point.

Mr. Fullerton—I suppose it is a proper piece of evidence, and it makes no difference whether it is in response to a question put directly for the purpose of extracting it or whether it is given as it was given by the witness. The manner in which Mr. Beecher spoke of that intimacy is competent proof. If he took the blame all upon himself and excused the lady, why it is proper that we should know that fact. It is hardly worth while to call his attention to the various conversations that he had with Mr. Beecher upon that subject, to know the particular words that he used to convey that idea, so long as that idea was conveyed.

Judge Neilson—I think we will let it stand. The learned counsel has the benefit of an objection to it substantially as if the question were put in form.

Mr. Evarts—Yes, Sir; I move to strike it out and your Honor overrules the motion.

Judge Neilson—Yes.

Mr. Evarts—I move to strike out the last clause.

Judge Neilson—The last clause, yes, Sir.

Mr. Evarts—We except to the refusal.

Mr. Fullerton—I will call your attention again to Bessie Turner. What was her age when she left you in 1871? A. I don't think that any of us knew her age.

Judge Neilson—Well, about; as near as you can guess.

Mr. Fullerton—Judging from her appearance what would you say her age was? A. When she left us in 1871?

Q. Yes, Sir. A. Well, I should have to guess; I should say 15 or 16, perhaps.

Q. Not older than that? A. I don't know; I think not.

Q. How? A. I think not; I don't know how old she was; perhaps she might have been older.



Q. Did she act in the capacity of a servant in the family while she was there? A. Yes, Sir.

Q. You have heard during the progress of this case, something said in regard to improper conduct on your part in connection with that girl. Now, I wish to ask you in reference to that, did anything occur such as is shadowed forth in the testimony, namely, that you went to her bedroom in the night and took her screaming from her room to your own bed? A. There is not a word of truth in it, Sir, nor any fact to found it upon; pure fiction.

Q. Anything improper ever take place between you and her? A. No, Sir; I never showed her anything but kindness during all the years of her residence in my house.

#### THE DISCUSSION RENEWED.

Mr. Fullerton here asked Mr. Beach in regard to the authority which he had undertaken to read to the Court.

Mr. Beach—At this instant I am not able to lay my hand upon the authority, but can when I have an opportunity at the library. But I find an intimation of the rule under the commentary in Cowen and Hill's Notes upon the question of secondary evidence, where secondary evidence is offered, the primary not being present. And Mr. Edwards, the commentator on the original text of Cowen and Hill's Notes, says:

"We have seen that where secondary evidence is offered it must be objected to in season, or its competency cannot be questioned," etc., referring to variety of authorities.

"It has been held too late to object if the testimony on the side of the party offering the secondary evidence is closed. The objection should be made when the evidence is offered, so as to afford the party an opportunity of obviating it."

Though this does not meet the precise question, Sir, or give the true reasons for exacting a timely objection where incompetent evidence is offered, yet I submit to your Honor it is a parallel rule of evidence. I do not care to repeat to your Honor the suggestions which I urged upon you before; that it is highly unjust to permit evidence which may be objectionable to be in part received, especially to the extent to which the narrative of this witness as to the interview between himself and his wife was offered, and then by an objection, after resting until he had got sufficient of the interview to satisfy his purpose, shut out the explanatory portions of the interview which followed. Now, the defendant, by resting upon his objection, has permitted us to proceed in the detail of that interview to the Court and the jury so far as to get a communication by Mrs. Tilton to him that on appearing before the Committee she denied the whole charge. And there we are interrupted and we are not permitted to give the reply which was made by Mr. Tilton, or the subsequent declarations of Mrs. Tilton, showing the reasons why she made that denial, or perhaps qualifying the character of the communication that she made to Mr. Tilton. We submit to your Honor that we should be permitted to give the whole of that interview, or else that the part which has been given should be stricken out.

Judge Neilson—I should be very sorry to deprive you of any right you have in the matter, and the question can be held until you have an opportunity to look at it.

Mr. Beach—Very well, Sir, that will do.

Mr. Fullerton—I intended to put in those reports after that question was determined. It is a little embarrassing to continue that line of investigation without having this question disposed of; however, I will endeavor to do so. I will hand the short report to the witness and ask him a further question in regard to it. [Paper handed to the witness]. Look at "Exhibit No. 50" and state whether you recognize it as one of the reports alluded to? A. Yes, Sir.

Mr. Shearman—I understand it has been marked for identification, but never put in.

Mr. Fullerton—What did you do with that report—"Exhibit No. 50?" A. I think I showed this report, and also another, to Gen. Tracy, who told me that—

Mr. Evarts—That we object to.

Judge Neilson—You must not tell what he said, Sir.

Q. What did you do with the report?

Mr. Evarts—If Mr. Beecher is to be affected when—

Mr. Fullerton—It is shut out.

Mr. Evarts—I am not speaking of the answer he was making, but of the general inquiry. There is evidence about this report given by Mr. Moulton?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Under which it has been received in evidence. Now, whatever this witness can properly bring into the evidence now must be received from something that has passed between him and Mr. Beecher, concerning it, I suppose.

Judge Neilson—That is so, certainly, as to conversations. He may, nevertheless, state what he did by way of showing an act, as that he put it in, or did something with it.

#### GEN. TRACY'S ADVICE ADMITTED.

Mr. Fullerton—What did you do with the report? A. I put this report and the other into the hands of Mr. Moulton, in pursuance of a suggestion from Gen. Tracy.

Mr. Evarts—That part I object to—"in pursuance of a suggestion."

Judge Neilson—Strike out the "in pursuance."

Mr. Fullerton—Why, Sir, it is a part of the *res gesta*.

Judge Neilson—Oh! no. He put that in the hands of Mr. Moulton; that is all you inquired for.

Mr. Fullerton—May I not ask at whose suggestion?

Judge Neilson—It is not material, I think.

Mr. Evarts—No; not unless it was ours.

Mr. Fullerton—In the first place I would not put the question to you; I did not ask for your suggestion.

Mr. Evarts—Our parties I mean.

The Witness—Mr. Tracy said if I made any report short of charging—

Mr. Fullerton—Never mind what Mr. Tracy said; it is ruled out. Under what circumstances did you prepare that report? A. Under a suggestion from Gen. Tracy.

Q. I put the question now—what was that suggestion? Don't answer it.

Mr. Evarts—That we object to.

Judge Neilson—I think it is sufficiently in that he made the suggestion at that time.

Mr. Fullerton—Had you at the time of the preparation of that report heard that any evidence had been given before the Committee? A. I had only heard that Mrs. Tilton had been before the Committee—

Q. Had you heard what evidence she had given? A. Gen. Tracy had told me.

Mr. Fullerton—Now, Sir, I propose to show what General Tracy told him in regard to that. I will put the question. What did General Tracy tell you in respect to the evidence that had been given before the Committee when you prepared that report? You need not answer.

The Witness—You say I need not answer?

Mr. Fullerton—No; it is objected to, I suppose.

Judge Neilson—I do not think it has been objected to. Ascertain if it is objected to.

Mr. Evarts—(after consultation)—We see no foundation for any such question as this, if your Honor please.

Judge Neilson—Do I understand you to object to it?

Mr. Evarts—We object.

Judge Neilson—I think you cannot give it.

Mr. Fullerton—Well, it seems hard, Sir, that Mr. Tilton should be judged by a paper which he drew, without letting in the circumstances under which he drew it, the information which he had received which led to it. His information was received from a person intimately connected with that investigation. Your Honor has learned during the progress of this case that there was a movement made every now and then, for the purpose of accomplishing some object, without developing the truth. What was done was to cover up the truth and not to expose it. Now, if Mr. Tilton, for the purpose of accomplishing any object like that which was in harmony with the wish of all parties concerned, and interested in the question, has prepared a paper, why then surely he ought to be judged by the paper and the circumstances together.

Judge Neilson—I think you have it—

Mr. Fullerton—How, Sir?

Judge Neilson—I think the motive in preparing it is plain enough from all the evidence. It has been spoken of before, you know, by another witness.

Mr. Fullerton—Yes, Sir. It has been spoken about before by another witness, but that witness was not qualified to speak of the motives which actuated the writer. He alone can speak of those.

Mr. Beach (to Mr. Fullerton)—Why, Mr. Moulton gave that interview. It is in evidence.

Mr. Fullerton (after consultation with Mr. Beach)—I am reminded by my associate of the testimony of Mr. Moulton upon that subject, which had escaped me for the moment.

Judge Neilson—I think he explained it.

Mr. Fullerton—Then is there any objection to having it explained twice? I didn't know that it was improper because it had been once given in evidence. Mr. Moulton testifies that Mr. Tilton was much softened in his feelings by what Mr. Tracy revealed to him as to the nature of the testimony

given by Mrs. Tilton before that Examining Committee, and in order to effect her purpose—the purpose that she had in view, in denying the truth of the story which was afloat, and which had led to the investigation—I say, in harmony with that he prepared this report for the purpose of covering up this great scandal.

Judge Neilson—That is your inference from your comprehension of the whole evidence so far. You think that is properly drawn from the evidence.

Mr. Fullerton—Properly drawn from what I know is in the mind of this witness and from the evidence he can give if it is permitted.

Mr. Beach—Your Honor is under an entire misapprehension in regard to the testimony of Mr. Moulton. It was called out by the other side that Mr. Tilton, being highly incensed at the appearance of his wife before the Committee, was bent upon some hostile action; that he then had an interview, in the presence of Mr. Moulton, with Mr. Tracy, and Mr. Tracy then represented to him the character of his wife's evidence, so that he was mollified and softened, and was induced to prepare this report. Now, they gave in evidence the interview at which Mr. Tilton was present, and now—Mr. Tilton being on the stand—we ask him to detail that interview—the same thing—the same subject matter which they gave in evidence, and it certainly is not objectionable as cumulative evidence.

Judge Neilson—No.

Mr. Beach—And they having introduced the interview and the facts which there occurred, certainly we are not precluded from proving the same interview by another witness.

Judge Neilson—Well, then, call his attention to the interview and then learn—

Mr. Beach—That is just what we are trying to do, Sir.

Judge Neilson—No, no; learn if he was induced to prepare this report in that way.

Mr. Fullerton—That question covers the exact ground on which I have already put it.

Mr. Evarts—We would like to be pointed to the evidence that is said to have come in on our examination, if that is the basis of the allegation.

Judge Neilson—Well, we will take it on that basis.

Mr. Fullerton—[To the Witness.] Now, under what circumstances did you prepare that short report?

Mr. Evarts—If your Honor please, we don't assent to that.

Judge Neilson—No; your objection is noted.

Mr. Evarts—No; but it is a question of fact, not of law. We only ask that we may be referred to the evidence upon our part that is now claimed.

Judge Neilson—My recollection is general that there was evidence of that character.

Mr. Evarts—Yes, Sir; but it was on their own part.

Judge Neilson—I don't recollect who called it out.

Mr. Evarts—That is the very point I want to be satisfied on. Your Honor allows the evidence. We must make our objection.

Judge Neilson—Well, proceed.

Mr. Evarts—Note an exception to its admission.



Mr. Fullerton—Now, if that report was drawn by you in consequence of any communication made to you by Mr. Tracy, of which Mr. Moulton spoke in his testimony, you go on and state it.

Mr. Evarts—That question I object to, if your Honor please, Judge Neilson—Yes, Sir.

The Witness—I had two interviews with Gen. Tracy; two or three.

Judge Neilson—Come to the one mentioned by Mr. Moulton, if you recollect it.

Mr. Evarts—With reference to this statement

The Witness—I think Mr. Moulton mentioned all those interviews because they all had reference to the same thing.

Mr. Beach—Yes, he did mention them all.

Mr. Evarts—They hadn't all reference to this paper.

Mr. Beach—Well, we want to give this evidence in regard to this interview of which Mr. Moulton spoke.

Judge Neilson—As leading to this paper.

Mr. Beach—Well, Sir, in reference to anything.

Mr. Evarts—Very well, I object.

Mr. Beach—That is your right.

Mr. Evarts—The only ruling has been that you had a right to call his attention to what passed leading to the preparation of this paper.

Judge Neilson—As a circumstance leading to its preparation.

Mr. Evarts—Yes, Sir, this paper or any other.

#### GEN. TRACY AS A PEACE-MAKER.

Q. Now, Mr. Tilton, go on and state. A. Gen. Tracy told me that I need have no anxiety concerning the formation of a Committee; that Mrs. Tilton had gone down to the Committee, at Mr. Ovington's house; that previous to the assembling of it, he, Gen. Tracy, had instructed her what to say and how to say it—put the questions to her, that she might make no blunders in answering them; that when she came before the Committee she astonished and surprised all of them with her eloquent allusions to her pastor and to her husband; that she denied everything; that there had been any wrong between herself and Mr. Beecher, or that there had been any proposal of wrong by him towards her, or that there was any foundation whatever for the scandal; and Gen. Tracy, in making this narration, wept. [Laughter.] He said he never had witnessed such a spectacle in his life. "Now," said he, "if you take right advantage of Mrs. Tilton's appearance before that Committee, and of the tender hearts of those gentlemen towards all the parties in the case, and particularly towards you," he said, meaning myself, "now is an opportunity to suppress the scandal forever. It is a woman's right," he says, "to deny it; let her deny it; let her stand on the denial. Now, coöperate with that denial, and it can be made a success." What Gen. Tracy said to me made a great impression on my mind. I said: "If there is any chance of saving Elizabeth, or of saving her name and fair fame, and blotting out the scandal on her name forever, I will be only too glad to coöperate with it." I told Gen. Tracy I would like him to explain to me what the method of procedure would be by the Committee. He

said something like this: "There are a number of gentlemen and they can summon whom they choose. They can summon Mr. Beecher, and he can say what he chooses, little or much; they can summon Mrs. Tilton, and she can say what she chooses, little or much; they can summon you, and you can say what you choose, little or much, and the Committee will be bound to make their report, not on the basis of the truth, for they won't inquire enough to get the truth; they will be bound to make their report on the basis of what those people choose to put down before them, and what you will choose to put down before them; only," he said, "a proper, gentlemanly and respectful report would be to the advantage of all parties." That was Gen. Tracy's language. I told him I would coöperate with the plan.

Judge Neilson—Thereupon what did he do? A. What did Gen. Tracy do?

Judge Neilson—That is my suggestion to you: Thereupon what did he do?

Mr. Fullerton—The "thereupon" don't quite come in quite yet, if you please. [Laughter.]

The Witness—Gen. Tracy then asked me what sort of a report would satisfy me, what kind of a report I would stand by. I told him I would stand by any report which did me no injustice, and which reinstated Elizabeth. "Well," said he, "all I want you to bear in mind is this: you may make any kind of report you choose which don't charge Mr. Beecher with adultery, or with any such crime as that he cannot maintain his pulpit. Make the offense anything you choose, and I will procure the passage of the report, only," said he, "of course the Committee could not bring in a report that he was guilty of adultery, or of anything that compromised his character and standing as a clergyman. Make a report of that kind, and you can make it *ad libitum*, according to your own wish and will." In accordance with that suggestion I made two drafts of that report. This [referring to the written report the witness held in his hand] is one, and the other is the long one.

Q. Now, look at the other one. Is that the other report you spoke of, "Exhibit D, 45?" A. Yes, Sir.

Q. Why were two reports prepared at that time? A. The first one which I prepared I dictated to Mrs. Tilton. *This* is it.

Q. That is "Exhibit D, 45?" A. Yes, Sir, the long one; I read it to Gen. Tracy, and he said that some alterations, or suggested that some alterations, might be made for its improvement. I then thought that, perhaps, if the Committee's proceedings were to be made public—

Mr. Evarts—No matter what you thought.

The Witness—That a brief report would be better, and I prepared this.

Mr. Fullerton—You wrote a brief report? A. Yes, Sir.

Judge Neilson—And thereupon you were led to make the brief report? A. Yes, Sir; I presented both reports to Mr. Moulton, and said that I would be satisfied with either, but that Mrs. Tilton was more pleased with *this* one, the large one.

## THE QUESTION OF DAMAGES.

Mr. Fullerton—If your Honor please, I desire to give in evidence, before the case is closed, some correspondence which took place between Mrs. and Mr. Tilton within a year, probably, next preceding July, 1870.

Judge Neilson—On the question of damages?

Mr. Fullerton—Yes, Sir; so as to show the relations existing between them. I suppose I can find that correspondence in a moment, probably.

Judge Neilson—You can refer to that, and put it in when you find it.

Mr. Fullerton—Yes, Sir, I wish to ask that privilege. If a little time is given us, I can shorten the examination considerably.

Judge Neilson—In the meantime you can refer to this other question, if Judge Beach thinks proper to consider it further.

Mr. Fullerton—That closes the direct examination.

Mr. Evarts—We would rather not, if your Honor please, proceed with the cross-examination until this very important part of it, to wit, the correspondence which is named, is given in evidence.

Judge Neilson—That will relate to another question.

Mr. Evarts—No, Sir; with great respect to your Honor, that is an important matter; it is a part of the substantive relations between the husband and wife, running through a year, and evidenced by written communications.

Judge Neilson—But bearing upon the question of damages.

Mr. Evarts—I don't understand that to be the purpose.

Judge Neilson—I understood it so.

Mr. Beach—Of course.

Judge Neilson—Their right to introduce the correspondence would be with reference to that question, the question of damages, up to the time of the proposed offense.

Mr. Evarts—It is a part of their right in the action to show certain relations between the parties in the suit, and the degree of impression that comes from the proof is to be disclosed when the proof is in; but your Honor sees that is an important thing for us to know, although they may have the motive of damages, yet the correspondence may be important to us in other relations as bearing upon the question of principal proof on the principal issue, which, of course, affects the character and conduct of these parties; and this plaintiff being the witness, I think your Honor will see that parties have a right to be more imperative than usual in inquiring in regard to it.

Judge Neilson—You have a right to have the direct examination closed before the cross-examination is commenced, if you think proper.

Mr. Beach—Will your Honor please consider that the correspondence to which we refer embraces a bundle of about that magnitude. [Referring to a bundle of papers in the hands of counsel.]

Mr. Morris—Oh! three times that.

Judge Neilson—You should make some selection.

Mr. Beach—We don't propose to introduce the whole of that correspondence. What we want is an opportunity to select from it such portions of different dates, giving their genera' charac-

ter, as will support our view of those relations. Now, will your Honor permit me to say that all we require from this witness is the simple identification of the papers. He gives no substantive evidence himself beyond that, and it is a matter entirely within the discretion of your Honor whether that branch of the examination shall be suspended until a future occasion. It is quite evident, if your Honor please, that this correspondence can have no possible relation to this case, except upon the question of damages.

Judge Neilson—Yes.

Mr. Beach—For whatever may be the result which this correspondence may show between the parties, even if it was hostile, and quarrelsome, and restrained, I don't understand that that affects the principal question, or would justify Henry Ward Beecher in seducing the plaintiff's wife.

Judge Neilson—Oh I no; it would not go to that question at all.

Mr. Beach—It is only to the question of damages.

Judge Neilson—It is a question now of mere economy whether the counsel cannot consent to proceed with the cross-examination.

Mr. Fullerton—I will make this proposition to the other side. I can have this correspondence ready to-morrow morning, and can have the letters identified and put in evidence, so that they can proceed to cross-examine whenever they see fit.

Judge Neilson—[To Mr. Evarts.] I think that will save your rights. It might be an economy of time to do so.

Mr. Evarts—The difficulty is this: we have made no suggestion that quarrelsome couples should have their privacy invaded by anybody. My only proposition is that I wish to have all the evidence that is to be produced from this witness before the Court before I cross-examine him. I do not know how much any future evidence may be affected by my cross-examination, and though we are very unwilling to put our learned friends to inconvenience, yet they have had possession of these papers always, the parties and themselves, and they can go on with another witness, or they can have an adjournment, if they wish. I do not now propose, by any consent of my own, to undertake to examine him, or to have this witness examined upon our part unless he is through on his own part, and your Honor, I think—

Judge Neilson—I recognize that fact, if you think it proper to hold to it.

Mr. Beach—We will occupy the time of your Honor, by identifying every one of them. We will introduce them by and bye.

Mr. Evarts—You will introduce them before I cross-examine him.

Mr. Beach—No, we won't introduce them before you cross-examine him.

Mr. Evarts—Then, we will see.

Mr. Beach—Then, we will see.

Judge Neilson—I think it would be better to agree upon a theory that will save time.

Mr. Beach—I quite agree with that suggestion, if your Honor please.

Judge Neilson—I think before they finish the cross-examination they ought to see these letters.



Mr. Beach—Your Honor won't compel us to produce our evidence until we are prepared to produce it. I suppose your Honor will recognize our right to identify the papers, and then produce what will seem proper to us.

Judge Neilson—I don't say the contrary of that, but they would still have the right to cross-examine him on any paper you introduce.

Mr. Beach—Certainly they can, when we introduce it, but they cannot compel us to introduce it now.

Mr. Evarts—Well, that depends—

Judge Neilson—Proceed, gentlemen, and identify your papers; it may take time.

Mr. Fullerton—It will take time, if your Honor please, for there are some hundred of them, not over a score of which do we propose to introduce.

Mr. Beach—Oh! not so many.

Mr. Evarts—[To plaintiff's counsel.] Well, gentlemen, we have nothing to do with your case.

Mr. Fullerton—I am very thankful for that.

Mr. Beach—[To Mr. Evarts.] But we have considerable to do with yours.

Mr. Fullerton—I have sent for the letters. They will be here in a moment.

Judge Neilson—[To the Jury.] Gentlemen of the Jury: In order to economize time, and to give these gentlemen an opportunity to select papers, those that are found to be proper, we will take our recess now, and until half-past one o'clock.

Mr. Beach—That won't help us.

Judge Neilson—Yes; you can select them in that time.

Mr. Beach—We cannot do it; we cannot go over 200 or 300 letters in that time, and at the same time get reasonable refreshments.

Judge Neilson—Can you proceed with another witness, and let this witness stand aside until to-morrow morning?

Mr. Beach—We can do it, if your Honor will give us the usual time of adjournment, until 2 o'clock.

Judge Neilson—Do you mean from now until 2 o'clock?

Mr. Beach—Yes, Sir.

Judge Neilson—Will the officer see that that place is cleared. The jury will remain in their seats. [To the jury.] Gentlemen, please be in your seats at 2 o'clock.

#### MRS. TILTON'S LETTERS TO HER HUSBAND.

The Court met at 2 o'clock, pursuant to adjournment, and the direct examination of Mr. Tilton was continued.

Mr. Fullerton—At what time did you usually go away on your lecture season? A. Sometimes in October, and sometimes in November.

Q. And how long would you generally be absent from home? A. Sometimes until February or March.

Q. Succeeding? A. Yes, Sir.

Q. Were you in the habit of visiting home in the interim? A. I was, whenever my engagements would permit me to come home. The season ordinarily occupied about from seventy to eighty engagements, inclusive of Saturday nights.

Q. And during this absence, did you correspond with your wife? A. Yes, Sir.

Q. How frequently did you write to her usually? A. Excuse me, what was your question?

Q. How frequently did you write to her usually? A. Oh! I always wrote to her every day.

Q. And how frequently did she write to you? A. Every day, I think. There may have been occasional exceptions. That was the rule.

Q. Every day? A. I wrote to her every day, and she wrote to me every day. That was the rule of correspondence.

Q. [Handing letters to witness.] State whether those are some of the letters written to you by your wife during your absence in 1867? A. Yes, Sir.

Mr. Fullerton—I offers these letters in evidence. [Reading:]

AT YOUR DESK—MONDAY, Jan. 7th, 1867.

MY PRECIOUS HUSBAND: I find our language very poor in superlatives when I attempt to describe my soul's love. What a delicious way you have of rebuking and reaching me! I will never again forget to date my letters, be sure, yet as I have written daily to you I supposed you would receive them in regular succession, and it did not occur to me that the date was always necessary.

And then, my sweet, will you *talk* to me as you write? pretending always that you think I am the loveliest and best of little wives.

My bump of approbateness is so thoroughly satisfied when you praise me—tho' it be true or not, I am content. I go singing and light-hearted about my work, every difficulty is straightened, and life is sweet.

Yes, darling, I will join you in your New Year resolution, as far as possible. I will go hand in hand with you, yet you know your strides will far outreach mine.

Skipping a part, she says: "What a blessing you are to me in every way. Mrs. Belcher made a long call on me to-day, and sent much love to you. Mattie and Katy Bradshaw also called. Please mention Mr. Ovington in some of your letters, it would so gratify him that you remembered him. I bless God for your continued good health. Do not go to places off the railroad, where you must expose yourself by long rides. You cannot afford to risk your precious life thus. The little girls I'm afraid are going to have their wish by having the whooping cough; they cough dreadfully. Good-night, love. Shall we ever be done with our caressings, when this long waiting is ended? Yours entirely,

ELIZABETH.

[Marked "Exhibit No. 81."]

Mr. Fullerton [reading]:

THE SHIP'S CABIN, AT MY DESK, January 9th, 1867.

MY BELOVED: It is quite time you should have a little insight into the manner in which I am using your hard wrought earnings. I sent you a list of my receipts and outlays since your departure. My heart is sick at the figures, while I make confession with shame and sorrow that I can do no better in my situation.

Had my bumps of benevolence and approbateness been smaller, then would I more nearly realize your ideal! Yet I could change the color of my eyes as well as change in these respects, I fear.

Journey's bill, White & Nichols's, Valentine & Bergen's, Roland Johnson and others have sent in again at the New Year, so I have thought it necessary to ask of Mr. Storrs their amount, as you said I might do. Please answer this letter with particular rebuke, if you feel it. I wait to hear. About this time every year my vital forces grow poor, and this, therefore, I have endured, felons and

other eruptions. I have now an inflamed eyelid and looseness of the bowels, which renders my coming to you impracticable, if no other obstacle offered itself.

I know there is an undercurrent of hope in your heart that I will be in Chicago, as with me I have hoped that somehow I would go, but I cannot.

Last night I went alone to Mr. Blanchard's reading of Dickens, which I enjoyed. I called a few moments before the reading on Mrs. Ford, who is to be sick next week. Mrs. Robert Benedict called here to-day. One of the greatest causes for gratitude which I have, is in your continued good health.

Once more I would bless you for your delicious letters. They will be a legacy to my children when I no longer live to preserve them. I will try to take better care of my wretched self because the best man in all the world loves me.

Yours, with entire devotion,

WIFEY.

[Marked "Exhibit No. 82."]

Mr. Fullerton [reading]:

OUR HOME, Jan. 10, 1867.

MY DEAR ONE: I feel how poor and meagre my letters are in comparison with yours.

When the envelope inclosing an account of your Saturday night's lecture at Mt. Vernon, and Sunday's reflections on the forest walk in Winter, together with a letter to Libby, and one to the little girls, was received to-day, a happier household it would be impossible to find than we were while reading them. We all bless you, love you, and pray for you.

Now, I fain would delight and comfort you in like manner, but the gift is nae given to me. Ah, well, my darling, it is my love that makes you happy, so all those parts of your letter which give me your soul, tho' extravagant, thrill me all over with ecstasy. My great bugbear and nightmare is, that I will hide my love or treat you ill when you return. Better that I die ere we meet again!

It rejoices me to hear you are happy and enjoy your life. The children and myself have never been so happy in our lives as this Winter in our home. Its beauty continues, nay, grows. So full of your dear self. May no unclean spirits enter here to deile it!

I have not been out to-day, nor had company. A snow storm raged this morning. I am reading the histories to the children. I accomplished very little of what I expected to do this Winter—have reached the height of my attainments in human learning I fear. Perhaps I may learn a more excellent love of the "Great Teacher." For this knowledge I hunger and thirst. How delightful that we are of one mind. You call me your "heart's twin." I want to be.

My eye is better to-day, but an influenza threatens me. The children's cough continues the same. Pray without ceasing that God would perfect our love. Good night. Sometimes I lie awake hours because I cannot nestle in your arms.

ELIZABETH.

[Marked "Exhibit No. 83."]

"WED., Feb. 13th, 1867.

"What shall I give to my beloved?" to-day? He has my heart—my entire life. Is there aught else a woman can give? But it hath little power to cheer or bless, parted by time and space! We will be very happy when again we reunite our lives. I feel so buoyant and yet so fearful lest I fail to bless you.

I have been again with Mr. O. He is not well to-day. Mr. and Mrs. Belcher took tea with me last eve. A good time we had chatting of you and singing hymns. My children are a perpetual delight to me. Were ever parents so rich in the almost perfect natures of their children?

Mr. Chittenden was burned on yesterday; a very heavy loss. You will doubtless hear of it through the papers.

I shall go to-night to hear Mr. Beecher open the Fraternity course. I am more and more inclined to have you break loose from *The Independent* and lead a more perfect literary life, or else start a new paper which shall be more for you. How good

Oliver's personal looks. I have read it three or four times already. "Theodore will close his Western engagements at Salem, O., Mar. 5, after which he will return to New-York."

Pray take care of your precious body, for tho' I am your sole lover still we manage very poorly in this world without the body.

"When I sue

God for myself, He hears that name of thine

And sees within my eyes the tears of two.

My lips hunger to kiss you. Adieu,

YOUR OWN

[Marked "Exhibit No. 84."]

Q. [Handing letters to witness.] Look at these letters of 1863, and say whether they are letters written by your wife to you?

A. Yes, Sir.

Mr. Fullerton [reading]:

SUNDAY MORNING, Jan. 28, 1868.

MY BELOVED: Don't you know the peculiar phase of Christ's character as a *lover* is so precious to me because of my consecration and devotion to you? I learn to love you from my love to Him. I have learned to love Him from loving you! I couple you with Him, nor do I consider it one whit irreverent as a *man*, bowed with grief for my sins. And as every day I adorn myself consciously as a bride to meet her bridegroom—so in like manner I lift imploring hands that my *soul's love* may be prepared. I wished the little girls after you left us, with overflowing eyes and hearts, consecrated ourselves to our work and to *you*. Do not fear but that God heard, well pleased, the aspirations of those little children. I will arouse all my energies to make them happy, that they may not suffer with loneliness for you—while I constantly inspire them with reverence and love for you. My waking thoughts last night were of you; my rising thoughts this morning were of you. I bless you. I know you. I love you. God sustain us and help us both to keep our vows.

Yours entirely,

ELIZABETH,  
Wife.

The children each send their love to you.

[Marked "Exhibit No. 85."]

TUESDAY, Feb. 4, '68.

MY DARLING: I write to you now in the morning instead of the evening, because the shadows of loneliness fall on me then, and I fear to darken your spirits.

Yours, inclosing \$100, from Newcastle reached me last night. I have now rec'd \$300—\$110 is my salary up to Feb. 1st. I feel the credit of my reputation as a financier depends upon the judicious manner I lay out these precious funds. I see in those bank notes the brains and blood of my heart's treasure, and the cause of the mutual separations!

If you expect me to save every month, as when I paid the carpet bill, I cannot, darling; for to do that I had to encroach upon this month's salary. However, I do expect to do something, and rest assured I will not involve you any more. I am obliged to pay for the repairing of the roof of our house; this last storm of snow made havoc in the ceilings of the spare room and my sitting room. I shall pay for it directly, so as not to incur another debt."

Mr. Fullerton—The rest is of a personal character. [Resuming the reading:]

You say that the four miles walk at Newcastle was a whole gospel to my soul. I read that over and over, and thanked God with all my soul for giving you that experience. I see you now walking in the sunshine, heartfelt, joyful, praising God. You did not need me then, but I follow on; and would fain catch the hem of your garment as you pass along, that I too may have a blessing.



I yearn and pray unweariedly to grow worthy of your love.  
Bye.

Yours, undividedly, WIFE ELIZABETH.

[Marked "Exhibit No. 86."]

Mr. Fullerton [reading]:

FRIDAY EVENING, Feb. 14, 1868.

MY —: Supply to gratify your own heart most perfectly some endearing epithet. I sent you my valentine this morning, and because I have laid out work for the morrow with the little girls, I come again to you to-night, that you may not miss my Saturday's letter.

Blessings on you, blessings on you, beloved. Yours from Crawfordsville—I shall ever remember that place with gladness—came to-day. To hear that you are happy, cheerful, and loving me, is more than even my faith could hope. I wept over it, I laughed over it, I prayed over it, and in the midst of my exultation Mattie called in, and tho' I was under vows not to read your letters, I did the next best thing, which was to get the bottle of wine you sent me the night you left and drink your bodily and spiritual health. While we were doing so, Mrs. Rooker called, and I got her a glass that she might mingle her blessing with ours upon you; I am sure they will follow you. Mattie has hungered to hear from you. I think she feels a little sore that Mr. B. visits here. See how great a power he and your dear self have over the heart. She said, 'Lib, I heard through Mrs. Morrill that Mr. B. called on you Wednesday. I believe he likes you ever so much.' Now, my darling, I have often urged him to visit Mattie, believing he would find her more comforting and restful than I can be. She would be refreshed and cheered, while for me, I who am rich in the fullness of your delicious love, have no need. Save for his sake, I am gratified if I may minister and thank God the while. Oh! dear Theodore, husband, how much I rejoice in your love—am kept in perfect humiliation—that he who knows me so well should love so grandly. This is the theme of all my thoughts. No other sentiment or creature have power to move me.

The cords of my heart are set to the harmony of love for you. Now, how I may be able to express this to you, when you return. I know not; that the flame will always burn I know, but that by reason of infirmities it shall glow through the cheek and through the eye, I know not. In God is my trust; He knows my heart's desire. I implore you to live by faith, and not by sight, with regard to your dear little wife. Now, to Him who is able to keep both soul and body, I commit you this night. Farewell.

Yours devotedly, ELIZABETH.

[Marked "Exhibit No. 87."]

SUNDAY EVENING, March 15, 1868.

My Dearly Beloved: I find myself running to the calendar as often to discover the date of your return, as before my babes are born I watch the date of their birth. I have settled my mind to receive you two weeks from to-day; do not disappoint me. But I shall have nothing to say to you save love, for have I not faithfully told you each day's events and experience? Now, this is unfortunate. There remains naught for me to recapitulate, and I crave your patience in advance. If the thought of seeing you is so delicious, what will be the reality? To-day I have had great satisfaction with my dear family. I have one supreme wish for our children, that they may now learn and accept the intimacy of the friend, God, which will help them rule their own spirit—conquerors they will then be. Kate kindly spent the day with me, going to church for the first time in many years. I know you are nowise interested in her or in her family, yet I am to her the one and only one bright spot in the world; were I to neglect that or be indifferent to her, all faith in God and humanity would be blotted out; it is almost moral night with her, yet there is a ray coming from my sympathy which lightens and cheers her.

Be not displeased with me therefore. I have been asked to be relieved of this burden for your sake, but it still remains, and I feel it my duty.

Kate McElrath is to be married on the 7th of April. Her mother sent me an urgent wish that we both might be present. Charity Whitney—that was—had a little son born yesterday. Edgar is here visiting. Sis. will go to-morrow to Sarah Storrs's for a few weeks. There is left upon my sheet a short space which I wish to fill up with thanks abundantly for your beautiful loves expressed in your letters. Think not my appreciating a pleasure comparable to the space I allow for expressing it!

I love you solemnly, utterly, truly. Come to me,

YOUR OWN ELIZABETH.

[Marked "Exhibit No. 88."]

Q. Look at the letter of 1869, and say whether it was written to you by your wife? [Handing witness a paper.] A. Yes, Sir.

THURSDAY, NOON, January 26, 1869.

Dearly Beloved: It is with delight and for refreshment that I hasten, as opportunity offers, to sit down without interruption to write and think of you. Is it not true that I write of you as well as to you? Oh! my own dear husband, could I but enjoy your companionship now a little while. I cannot understand why the demons weariness, fault-finding, ungenerous selfishness, and many hateful little spirits, perpetually hang about me when you are with me, to modify and lessen our possible enjoyment.

I was thinking, last evening, when looking out upon the clear, beautiful moon-light, how different were the shadows of nature, though they be the shadows of night, from the shadows of the mind and heart; the former purifies, cheers, the latter depresses. I was grieved not to mail a line to you early this morning, but last night my usual time for chatting with you was occupied by a visit from Mrs. Wheeler, and an evening call from Mr. and Mrs. Fayden. Besides, my sweet, you must realize the little unborn is growing finely; you would hardly believe how changed is your little wife's personnel. Consequently, I am tired almost always. It is not without pain and trembling that I look forward to your homecoming, unable as I shall be to minister to you—sickness and confusion at home. You may not rest here. I am impotent to help it, so that I actually suffer in anticipation, as I know I shall in the realization.

\* \* \* \* \*  
Will you write to Mattie? I am starving for a letter; none since Thursday last. Mr. Maverick and father had a long discussion of three hours here this morning. They confessed that each for ten years have not been allowed to talk, Mr. Maverick, like mother, saying I have no time to talk, it's all waste time to argue, etc. Father will see Mr. S. this afternoon, and told Mrs. M. that he would like nothing better than to bring about a reconciliation between her and her husband. Darling, Mrs. Wheeler expressed a great deal of affection and interest for you, and your work—sent her love expressed in any manner as I thought best to convey it. This pleased me very much, as I should be happy to have all my friends love you. Ira made his speech Sunday, and will give you an account of it, though Kit says he does hate to, but will keep his word. It is now 5 p. m., and Carroll is waiting to take this rambling letter to the office.

Good bye and good night.

Your own dear wife, who is proud and fond of her husband.

[Marked "Exhibit 89."]

#### MR. TILTON'S LETTERS TO HIS WIFE.

Q. Look at the letters I now show you and say whether they are the letters, or some of them, which you wrote

to your wife during your absence [handing witness letters]? A. Yes, Sir.

CRAWFORDSVILLE, IND.,  
SUNDAY MORNING, Feb. 9, 1868. }

*My Dear Angel:* I dreamed of you all last night, and awoke thinking of you this morning. How much I want to see you! How I yearn after you! How my soul blesses you day by day! I can never describe how precious your love of your husband has appeared to him during these few weeks past. Your singleness, your fervor, your purity, your devotion—they fill my mind and heart with reverence, adoration and humility.

I regard my last evening spent with you at home as the most memorable point in my whole life. You opened for me, that night, the gate of Heaven, which had so long seemed shut.

Ever since, I have had nothing but glory, thanksgiving, and praise. If ever a man was made a new creature, that man was I: no more despondency—no more repining—no more vain regrets—no more loss of self-respect—no more groveling in the dust. On the contrary, I am once again a man among men, and a Christian among Christians. Now, this transformation I owe to yourself, to your irrepressible love and devotion, to your ceaseless prayers, and to your victorious faith.

You always have in your power either to crown or dethrone me. You have the chief ruling influence of my life. Your words, your wishes, your looks, your thoughts, act on me like magic. When I am doing you an injury, or slight, or hardness, I am made so miserable that I do not wish to live. When I am making you happy, I walk like a Prince newly come into his kingdom.

Your letters, since I have been from home this last time, have been the dearest you have ever penned. They are loyal in their tone. Each one fills me with renewed pride and joy in my wife. O, my darling, in comparison with such love as you express, how poor is the friendship of all other friends! I have never seen any one who loves as you do. You have the richest of all human hearts. I am pledged to you forever. My vows I shall keep and not break. With God's help and with yours I shall be the faithful-est man in the world. Blessings on your soul this Sabbath day.

Ever yours, THEODORE.

[Marked "Exhibit No. 90."]

CLINTON, IA., Feb. 20, 1868.

*Pet:* Heigho! Five of your letters have just come to me all in a bunch! "Here's richness!" They have put me into such a merry humor that my blood has been laughing up and down my veins. They made an actual handful—nay, more than that—a heartful.

Hereafter give yourself a longer interval between the day of writing and the day when you expect that I will receive the letter. Perhaps a week is not too much.

I am sorry to learn that the letter from Warren, Ohio, in which I enclosed you a \$50 bill, has not reached you. I have just dropped a note of inquiry to Warren on the subject. This town is on the west bank of the Mississippi. I have just come to it late in the afternoon, and expect to fly away from it in the train immediately after my lecture. I am spending the few remaining minutes of sunlight in perusing these lines—the only chance I shall get to write to you from Clinton at all.

My last was from Crawfordsville. My second visit to that little college town was full of pleasure. I was very cordially received, had a crowded house, got the boys out of debt and went away in fine humor, reaching Chicago at 9 in the evening. I was met at the station by Col. Elliott who said that Betsey was at the Opera hearing Janauschek. "Accoutered as I was" he took me around, and I heard two-thirds of the German play of Adrienne Le Couvreur. Anna Dickinson sat two seats in front of us. I spoke to her after the lecture, and introduced Betsey and the Colonel. I slept at 698, and left early this morning.

The picture Madonna had arrived in good condition, and was hanging on the wall. It is very neatly framed, and looks pure and royal. Betsey was pleased, but the old fragrance has gone out of "the prairie rose." The flower is still comely, interesting and agreeable, but I marvel at myself for once thinking it so fragrant above all the rest of the garden. It is gone forever! It can never be to me henceforth anything but a common plant. This figure of speech is a mystery which I think you will understand. I intimate no names. The corner of this sheet crowds itself against the pile of letters as they are lying on the table—just as I would like to crowd my hands into yours, or both of yours into both of mine, at this blessed moment.

How I would like to be at home to-day! Or else how I would like to see you here! The weather is warm enough for grass to grow, birds to build, and hearts to love. You ask me if I like to read the recitation of your love. Yes, my darling! Every bird loves to hear his mate sing. Your love for me, as expressed in your letters, is my chief joy and rejoicing in this world. It makes life seem a braver thing to me. It makes my journeys nothing but bright trifles, and my hardships a bagatelle. It puts vigor into my step and joy into my work. I look round at my fellow-travelers in the cars, and my co-workers everywhere, and ask myself, "I wonder if these people have as much spring and motive for work as I now have?" The thought of giving you a home free and clear of debt is a tonic to my whole system. I am somewhat wearied, thin, and pale, but never was so cheering in all my life, never so free from fretfulness, never so thankful for my prosperity, and never so happy in my love for wife and children. This makes a man of me day by day.

I very rarely have any depression of spirits. The old claim has gone away entirely; the day has dawned. I have been trying to get a chance to write to the children, but the people who are to see me will not permit me to do so this afternoon. Give the chicks my truest love, and a kiss all around.

Faithfully yours, THEODORE.

That word "faithfully" means a great deal.

[Marked "Exhibit No. 91."]

MONONGAHELA HOUSE,  
PITTSBURGH, PENN., Jan. 10, 1870.

*My Darling Wife:* I owe the short remainder of this evening to you and shall fulfill my debt.

I was unable to keep my promise (made in the previous letter) to write you on Sunday. Early on Sunday morning I went to see a lawyer to study from his books the legality or illegality of the New York Legislature's revocation of the Fifteenth Amendment. In the afternoon I addressed a meeting of children. In the evening I wrote an editorial article—reaching past midnight. All this you know was not here in Pittsburgh but in Tidouate. This morning, since my editorial could not go fast enough by mail to reach the office before Tuesday afternoon, I telegraphed it in full. It contains both legal and poetical quotations, and I am curious to see how many blunders will be made in transmitting it. The title is "The Mutineers at Albany." I had previously sent a leader on "Mr. Pip and his great Expectations." My sojourn in Tidouate was made very agreeable by kind and hospitable friends who entertained me with the piano, the flute, the vox humana, the voices of two canaries and a mocking bird.

My journey from Tidouate to Pittsburgh (which I was nearly the whole day in making) lay all the way along the banks of the Alleghany—one of the most wild, picturesque and romantic of rivers. The weather was lovely and the scenery charming. I do not know of a more beautiful panorama from a car window. I alluded to it to-night in opening my lecture.

The house was crowded, every seat in the Academy of Music being filled, gallery and all. After I have spoken in Pittsburgh I always feel that I have got through with the most



Important occasion which my western trip presents. Pittsburgh is my western Boston.

I send you herewith a sorrowful letter from a stranger in Wisconsin, which, if you care to do so, you may answer.

With the exception of your lead pencil note from Garrison's I have not heard from home since I came away. I suppose, of course, that you have written, but all the mail trains seem to be out of joint, and nothing arrives in time. My last week's earnings I sent to Frank Moulton, in order that he might pay for the share of *The Union* stock which I purchased of La Famee. I had given my note to La Famee for \$450, payable Jan. 1st. So that debt is out of the way. I now owe Mr. Johnson \$500. and Mr. Storrs \$500. And I am keeping an accurate account of what I owe to you. Paying my debts is as intoxicating as wine; it is one of the chief delights of life.

You have never seen the oil regions. I have been in them four days. During the time have seen hardly less than a thousand oil-wells, some of them a thousand feet deep; some of them yielding a hundred barrels a day, and making their owners as rich as princes; and some of them dry, useless and profitless—a means of ruining many speculators. I must have passed the very spot to-day where Washington crossed the Alleghany on a raft. If that thrifty gentleman had suspected the existence of petroleum, he might have spent his life in sinking wells, building derricks, and tanking oil, and have never become the Father of his Country.

I have received to-night a telegraphic dispatch from Steubenville, O., inviting me to make my sojourn to-morrow at the Female Seminary in that place, which I expect to do.

Give my love to the children, and say that I shall take an early opportunity to write them a letter. But, as a general rule, my only chance to get a pen in my hand is between my lecture and my bed-time; and oftentimes the Committee steal away even this little bit of coveted leisure. So my letters cannot be numerous.

My remembrances to Sophia, and to the other members of "my house and heart."

Lovingly yours,

THEODORE.

[Marked "Exhibit No. 92."]

SPRINGFIELD, OHIO,

*Sunday Night,*

January 16, 1870. }

*My dear Wife:* A fierce rain is falling, and the window panes are pelted with it. My sojourn is in a stately house, on a high ridge of land, and overlooking the Lagonda Valley. The exposed, commanding situation gives me all the voices of the storm. Heaven's great organ blows to-night. I repeat my cry of "No letters." One letter, indeed, I *did* receive last evening, but it was the one which you had sent to Tidioute a week before. I have received none *direct from home*. It was because I worried myself with thinking that something was wrong that I sent you the telegram from Columbus. The answer to that telegram came promptly—I received it on the same day that I sent the dispatch.

I am writing these lines from the most vexatious of ink-stands, a little, aged glass bottle, with an ebb-tide of muddy ink at the bottom of it. I want to write you a long and gossipy lingo, but here, in a rich man's house, I have hardly ink enough to sign my name.

Mem: When strangers, particularly if they are literary men, make a visit to *our house*, provide them with good ink even if you have to give them a bad breakfast.

What you said in the delayed letter from Tidioute about finance, and about your new-found pleasure in financing, has determined me to make you my banker for the funds which I receive during the rest of my journey. Deposit them in the savings bank.

A happy pair, a ten weeks' bride and groom, are in the house—both young, handsome and jubilant; the light of the honeymoon shines in their faces—

youth at the prow, and pleasure at the helm. Oh! the merry, merry days when *we* were young! I worked all night long on Friday in writing my comments on Mrs. Stowe's "Lady Byron Vindicated." I wrote the entire article between bed-time and morning. After all I fear that the slow mail trains pay such respect to the Sabbath as will detain my letter too late for next week's paper.

Frank Moulton will take care of the business on which La Famee called. I cannot pen with this pitiful ink the love which my heart prompts me to send, for there is only one more drop in the bottle, and *that* I must save for directing the envelope.

Affectionately yours,

THEODORE.

[Marked "Exhibit No. 93."]

DES MOINES, IOWA,

*Sunday Evening,*

January 30th, 1870. }

*My Dear Pet:* In this far-away town, the extreme limit of my journey, I feel my homesickness more than ever before. To-morrow morning I begin a slow march eastward, but I shall feel like a sailor tossed on the sea until I get to my final haven of rest in my own house. There is but one home. Yesterday I made a visit to the Legislature, which is now here in session. It is a fine looking body of men. During my brief presence in the Senate, an old law which did not permit a mother to inherit a dead child's property on equal terms with the father, was taken up, discussed, put to vote and unanimously repealed. Think of it! An advanced measure like this receiving no dissenting vote! I was never before so greatly pleased with any spectacle in a legislative body. It will not be a dozen years before woman suffrage will be the law of Iowa. One hundred members of the Legislature were present at my lecture last evening. This afternoon I took a long walk with Gov. Merrill and Attorney-General O'Connor and visited the grounds of the projected capital of the State.

My room at the hotel has been constantly filled with callers ever since I came here yesterday morning. The town is full of public men. I have received much kindness from many people. Every year I get more and more Westernized. I shall send Cad, to begin his fortunes on the west bank of the Mississippi. The supper-bell now rings, and I am waited for at the table by some gentlemen with whom I have promised to drink a cup of tea.

Respectfully, yours,

THEODORE.

[Marked "Exhibit No. 94."]

OBERLIN, O., Feb. 21.

*My Darling:* This is the last night of my dreary correspondence and homesick absence. I feel like one, who, having waited through the night, now watches for the morning. Wednesday at Whitehall (on Lake Champlain) will complete my programme. Then, as Browning says:

"Only a touch and we combine."

Affectionately yours,

THEODORE.

[Marked "Exhibit No. 95."]

Q. In some of these letters Mrs. Tilton made reference to her salary. What did that mean, Mr. Tilton? A. Well, it meant that she had all the money that I had; I usually sent her my earnings. Perhaps that particular letter, if you can give me the date of it, may bring some special arrangement to my mind; I don't remember now.

Q. I don't recollect its date. A. There was a time when she had a bank account of her own; I don't know whether it was that time or not.

Q. Was there any allowance made her or any specific sum at any time during any period, for pin money, or anything of that kind? A. I don't remember that, Sir.

Mr. Beach—Something was said about \$40 a week.

The Witness—That was two or three years afterwards, 1872. She had a bank account. I sometimes used to deposit money to her credit when I went away, and she had a bank account in one or two of the banks in Brooklyn; not two at a time; sometimes at one bank and sometimes at another.

Mr. Fullerton—Something has been said about \$40 a week; what does that mean—in one of the letters read some days ago? A. Oh! my impression is that that refers to the Fall of 1872. I had forgotten it. All I know about it is what the letter itself mentioned.

Q. In some of your letters you say you have received no letters from home since you left. Did you afterward receive letters which had been forwarded to you but which had failed to reach you? A. Yes, Sir; I was frequently subject to accidents on the trains, running into the snow and getting detained, and then going to the post-office I would find no letters there. Sometimes they would be sent on from one office to another. One letter has pursued me through three or four towns. Occasionally half a dozen letters would come together. For instance, a letter would go to one town after I had left and it would be sent to the next town, and it would reach town after I had gone and it would be sent to the next, and reach that town after I had gone; so, sometimes, half a dozen letters were made up in a bundle by some kind postmaster who knew where I was, and they would come to me all in a heap.

Q. Before the recess you said something to the effect that Mr. Beecher had sent Bessie Turner away. What knowledge have you of any act of Mr. Beecher's in that respect; I mean your personal knowledge?

Mr. Evarts—From Mr. Beecher?

Mr. Fullerton—Yes, Sir; from Mr. Beecher.

The Witness—My knowledge was derived from Mr. Moulton.

Q. Not from Mr. Beecher. Very well. During Bessie Turner's absence at school did you furnish any money directly or indirectly for her expenses? A. Did I?

Q. Yes, Sir. A. No, Sir; not any, not a penny.

Mr. Fullerton—I believe that is all.

#### CROSS-EXAMINATION BY MR. EVARTS.

The cross-examination of Mr. Tilton was then begun. Mr. William M. Evarts, the senior counsel of the defense, himself conducted the examination. The separation of Mr. and Mrs. Tilton was first considered, and then the questioning of the counsel branched off on Mr. Tilton's views of churches in general.

#### THE SEPARATION OF HUSBAND AND WIFE.

Mr. Evarts—Mr. Tilton, from the time you were married until your wife left you as you have stated, about the 8th of July, 1874, was there any separation of home or residence between you other than such as happened by journeys or engagements that took you apart? A. No, Sir. Perhaps I should qualify that answer by saying that in the early part of December, 1870, Mrs. Tilton went two or three days to her mother's house, at her mother's request, and came back.

Q. Well, leaving you? A. Well, it has since been called a sep-

aration. I did not regard it so at the time. I wish to be entirely accurate in my answers.

Q. It was a separation in the sense of her being away from the house and at her mother's a certain period of time? A. Two or three days, I think.

Q. And with that exception you lived together as man and wife from your marriage until she left you on the 8th of July?

Mr. Morris—The 11th.

Mr. Evarts—The 11th; is it the 11th? Well? A. Yes, Sir.

Q. Now, just preceding this 11th of July, did you leave her and the house in the sense of intended or purposed separation? A. I did, Sir; on the night of Monday, Tuesday, or Wednesday—I don't know which—of that week, but it was the night on which she came home and reported to me that she had united with Mr. Tracy to deny the story.

Q. No, no; the night that you have spoken of that she told you that she had been to the meeting? A. Yes, Sir.

Q. And you did then leave as with the purpose of separation. Did you take leave of her in that sense? A. I left the house—yes, Sir.

Q. Now when did you come back; can you give us this day? A. Well, it was the night of her appearance before the Committee and of her announcement to me that a Committee was in existence. If you can give me that date that would be the date.

Q. This appearance of Mrs. Tilton before the Committee we understand to have been on the 6th of July? A. What day of the week was that, Mr. Evarts?

Q. That I don't know.

Mr. Beecher—Monday, Mr. Shearman says.

Mr. Evarts—If the 11th was Saturday then the 6th was Monday. A. Yes, Sir; that was the night.

Q. Very well. Were you at home when Mrs. Tilton came to the house that night? A. Yes, Sir; I was in my library.

Q. And that was late at night, wasn't it? A. Not very; about ten o'clock.

Q. Now, when did you leave her and the house as with the purpose of separating? A. About an hour afterwards.

Q. That same night? A. Yes, Sir.

Q. What day did you return and what part of the day? A. I returned the next morning to see Gen. Tracy.

Q. Well, I mean to return to your house? A. Well, Gen. Tracy gave me such an account—

Q. No matter about that. A. —of her appearance before the Committee that I went back home to see her.

Q. No matter. Mr. Tilton, will you really be so good now as to answer my questions? A. I shall endeavor to do so.

Q. When did you return to the house? A. I think the next day, possibly the next afternoon. That is my present impression.

Q. And did you thereafter remain with your wife as you had been before? A. I did, Sir.

Q. Now, are you able to say distinctly whether that was the 7th that you returned, or the 8th? A. What day was Monday?

Q. Monday was the 6th. A. My impression is—

Q. Or was it in the night between those two days; late, I mean, in the night between those two days? A. No, Sir, I don't think



It was late in the night. My impression is that it was the next day, in the afternoon; still I won't undertake to state that positively.

Q. Well, it is not material. Now, what time of the day did Mrs. Tilton leave your house on the 11th? A. I should think about six o'clock in the morning, possibly a little later.

Q. Did she take leave of you? A. Yes, Sir; she woke me up and bade me good-bye, and said she was going to go away forever.

Q. And did she tell you where she was going? A. She did, Sir; she told me she was going to Mr. Ovington's.

Q. And did you afterwards follow her or see her there? A. I did. I went down and took breakfast there.

Q. With her? A. And with the family.

Q. Where she was; and, so far as you know has she resided in that family ever since? A. I don't know, Sir.

Q. So far as you know? A. She has been out of town in Connecticut, I understand, since.

Q. But as a residence, so far as you know, has it been there? A. I have heard of her being there and at other places. Whether it is her residence or not I cannot say.

Q. Have you heard of her being at any other place as a residence than Mr. Ovington's? A. I don't know what you mean by residence. I have heard of her being in Connecticut and being in New-Jersey.

Q. You know the difference, I take it, between a visit and a residence? A. Yes, Sir.

Q. Well, now will you answer? A. I don't understand that her residence is at Mr. Ovington's.

Q. Where do you understand it is? A. I understand it is at my house.

Q. Yes; very well. Have you heard of her being at any other place as a residence except Mr. Ovington's? A. I never have heard of her being at Mr. Ovington's as a residence.

Q. You think she still resides at your house? A. I think that is her residence; she does not reside at her residence. [Laughter.]

Judge Neilson—Gentlemen, will you please be quiet.

Q. I observe you say, when asked your age, that you are about thirty-nine. What do you mean by that? A. I meant exactly what I said.

Q. Don't you know your age? A. Yes, Sir.

Q. Well, what is it? A. I am about thirty-nine.

Q. When were you born? A. October 2, 1855—1835.

Q. Now, at the time of your marriage, what was the situation or employment in which you were? A. I was connected, I think, at that time with *The New-York Observer*; yes, Sir; I believe I am correct in that.

Q. And what was your wife's position in respect to residence or occupation, if any, at that time? A. My wife resided at No. 48 Livingston-st. with her mother.

Q. Who was then a widow? A. Yes, Sir.

Q. And had no employment other than as a member of that family, I suppose? She was not in any pursuit of life; she was not a teacher? A. Do you now refer to her mother or herself?

Q. To herself. A. No, Sir; she had no occupation.

Q. And what were your respective ages at that time? A. I was married on the day I was twenty years old. Mrs. Tilton was between one and two years older than I.

Q. And how had your acquaintance which led to your marriage been formed, and where? A. I became acquainted with her when I was about ten years old. Her family then lived in New-York on the same square with my father's house. I was a schoolmate of her brother, Joseph H. Richards. I knew her when she was a very little girl.

Q. And were you familiar as play mates or school mates? A. Yes, Sir.

Q. At that early age? A. Yes, Sir; I was more familiar with her brother at that early age than I was with her, because I went with him to school and saw her frequently at his mother's house.

Q. And how long prior to your marriage had the ordinary attentions leading to marriage commenced? A. I think, Sir, from about the time I was sixteen years old.

Q. So that you were very well acquainted with her at the time you married her? A. Yes, Sir.

Q. And she with you? A. Yes, Sir.

Q. And from that time till she left you, was not the intercourse between you that would make two persons understand and know one another as close and intimate and constant as is possible in human affairs? A. Yes, Sir.

Q. Now, Sir, what estimate do you put upon the intellectual powers of your wife? A. I think she has more than common brain.

Q. What upon her education? A. I was about to say she had more than the ordinary education; but perhaps I ought not to make such a statement. She was educated at the Packer Institute in this city—went through a full course, I believe. She has the ordinary education of a young woman who has gone through a female college.

Q. That is the formal education? A. Yes, Sir.

Q. Then in the discipline of literature and companionship, with elevated characters, and the discipline of life, how do you place her in respect of education? A. She has always been fond of books, she has read constantly, I won't say to any very profound degree. She was fond of reading aloud to me and of being read aloud to by me. She was always fond of whatever was good in literature, art, or music. She was fond of poetry.

Q. Well, now, in association with men of elevated talents and character, what have been her opportunities? A. Do you mean that as another form of asking me what public men have been in the habit of coming to my house?

Q. I do not care to get at names, you know. My object is to show whether she has had associations with elevated and cultivated people during the course of her married life. I have no objection to any names, but, then, it is with no such purpose? A. Well, Sir, during all our married life we have had guests at our house, and we have very frequently visited other houses, and she has seen very many men and women of rank and cultivation.

Q. And appreciated and shared with you that companionship, has she not? A. Yes, Sir; to a certain degree. I do not think she ever cared very much for men because of their rank or fame.

Q. Not externally, but their characters and faculties—didn't she estimate men according to them? A. I think that she always took the greatest interest in those who were most necessitous—those that were most suffering. I do not think that she looked to the high estates of the world, but rather bent to the lowly and to the unfortunate.

Q. She was of a kindly nature and a charitable disposition? A. She was a very lovely woman, Sir.

Q. Now, your career during this time since your marriage has been that of a journalist in his different stages, and of a writer and of a public speaker either at the lyceum or at the hustings, has it not? A. Yes, Sir.

Q. And your habits at home, so far as you have been at home, as your engagements permitted, have been those of a reader and writer, have they not? A. Yes, Sir.

Q. Did your wife participate in those interests and employments of yours with you? A. Yes, Sir; I very frequently read to her what I had written. Sometimes she acted as my amanuensis.

Q. And did she give you the benefit of her sympathy and aid in any way that you needed in that regard? A. She did, if she agreed with what I wrote. If she did not she gave me the opposite.

Q. But at any rate, the subject was shared between you, either in concurrence or in opposition, was it? A. Yes, Sir; she always knew all my thoughts, all my labors.

Q. And you hers? A. I think not, as the result has proved.

Q. Well, but for the result which is the matter now in dispute? A. Yes, Sir.

Q. Leaving that out? A. Yes, Sir; I had perfect confidence in her. I am speaking now of the earlier years.

Q. Well, you mean—well, we will go into that more in particular hereafter. Now, Mr. Tilton, what about her domestic occupations and interest; did they soon after your marriage and so on occupy a good deal of her time, her strength, her affections and her interest? A. Yes, Sir.

Q. And those were wholly of your and the children's comfort and well-being, were they not? A. No, Sir; they always included the well-being of all persons who came within the sphere of her influence. She was in no sense a selfish woman.

Q. I spoke of within the house. She had no interest inside the house but yours and the children's, had she? A. She was not selfish to that degree, Sir. She was a very liberal, catholic-minded woman, and did good to whomsoever she touched; all guests, all relatives, her family and my family, her mother and my mother.

Q. And guests at her house? A. Yes, Sir.

Q. From that connection and otherwise? A. Yes, Sir.

Q. And for all she cared and labored as a wife should? A. Yes, Sir; most beautifully.

Q. Now, Mr. Tilton, you were both members of Plymouth Church when you were married? A. I think that—well—let me see; she became a member in 1851, I became a member in 1853; we were married in 1855—yes, Sir.

Q. And in joining that church, and in the religious sentiments and opinions which led to that solemnity, did you share

each other's feelings and purposes at the time? A. I think we did, Sir, completely.

Q. And at that time there was a harmony between you and her, both in religious opinion and religious feeling and affections; was there not? A. Yes, Sir; very strong.

#### A DELINEATION OF MRS. TILTON'S CHARACTER.

Q. Were either of you, from that early time, and how long, occupied in labors of Christian charity or service connected with the church or as a part of the church's duty to those who needed aid and instruction? A. I don't know that I understand exactly what you refer to; we were both connected with the Sunday-school. Is that the line of labor, Sir, that you refer to?

Q. That is included, no doubt. A. As for works of charity, she has always been engaged in them.

Q. And did you participate with her? A. Well, sir, I was not her equal in those directions; very few people are.

Q. How long did those labors and habits upon her part in this direction of Christian duty continue? A. I presume they continue to this hour. Understand me, I am not referring to any association of hers with the church or the Sunday-school at present.

Q. No, I understand. Do you remember one form of her labors in connection with the church or religion, a Bethel school? A. I do, sir.

Q. And what was that? A. At the school called the Bethel connected with Plymouth Church; there was a large class of women residing in the poorer neighborhoods. I believe as a necessary condition of membership in that class they must be mothers—that is my present recollection; and she was their leader and teacher.

Q. And how long was that particular form of her labors? A. I cannot answer as to the date.

Q. But a series of years? A. Yes, Sir; I think so.

Q. And do you remember what years it embraced? A. I do not.

Q. Well, within some reasonable limits can you tell? A. No, Sir; I cannot.

Q. Did it cover the years from 1865, we will say, to 1870? A. I should not like to give any date from my recollection—I have a very poor memory of dates; but it was a long period, and her service was very devoted.

Q. And she was greatly interested in it? A. Yes, Sir.

Q. How much time did it consume, and on what days? Was it on Sunday that the actual teaching was given? A. The actual teaching was given on Sunday, but is consumed more time—she prepared herself, her whole heart was on her duty. She made little notes and sketches in advance of the lessons which she was going to teach them; occasionally some of the women of her class would call and see her.

Q. Now, in regard to the disposition of your wife; was she of a sympathetic and affectionate nature? A. Yes, Sir.

Q. Very notably so? A. Yes, Sir, to a very rich degree.

Q. Leaving out, now, a consideration of this matter in issue here, what have you to say regarding your wife's opinions and



feeling's concerning feminine chastity? A. I think my wife loves everything good and hates everything bad; and I believe to-day she is a good woman—

Q. Well, we do not differ from you.

Mr. Fullerton—She was, Sir.

Mr. Evarts—Now—

Mr. Fullerton—One moment; he was going to make—

The Witness—I was going to say that I have never blamed her for the blame which belongs, not to her, but to her betrayer.

Q. Well, I desired to omit that subject. We shall come to that before we get through, but, still, the point is whether she was—whether you observed and can speak of her as to her character in that particular of feminine delicacy and pride in woman's chastity? A. I don't think that that topic ever came up for discussion with her or for any signal appreciation; and I do not think that the theme at all entered into her mind.

Q. Have you not said of her that she was a great stickler for the purity of her sex? A. She became so after her downfall.

Q. Well, a great champion of the purity of her sex; have you not said that of her? A. She is a great champion of the industrial and educational and political rights of her sex.

Q. Well, have you or not expressed that view of her character—that she was a great stickler for the purity of woman? A. Yes, Sir; for all—

Q. A great champion of the purity of her sex? A. All that is included in the dignity and nobility of womanhood. She has always had great pride in her sex; she has always considered that her sex was the equal of ours, and therein I have always agreed with her.

Q. And that its virtue was a supreme interest of the sex? A. I do not think that in considering the sex she has ever singled out the one quality of chastity for any especial thought or comment. I do not think that that subject ever floated through her mind. The interest which she had in her sex was in its general elevation, its education, its enlargement of opportunities, its widening of privileges.

Q. Now let me ask your attention to this observation, and see whether you will recognize it as having been made: "Elizabeth always felt that when Mr. Beecher went to such and such a place there were women who would flatter him; I don't think she did at all; she has always been a stickler for the honor of her sex. She said to herself, 'I will represent my sex' " A. Yes, Sir.

Q. I read from the 64th page; those are your opinions about her now, are they? A. Oh! certainly; yes, Sir.

Q. Now, Sir, as to delicacy of behavior on the part of women towards the other sex, what was her disposition and habit in that regard? A. She was a perfect lady, Sir.

Q. And what was her exaction in that respect from other women with whom she had or professed friendship? A. I don't think she had any friendships for any women from whom she had to make any such exactions. She associated with ladies like herself.

Q. Was she not distressed at any suggestion of impropriety on the part of women in their relations with men? A. Why, Sir, every lady would be, and she was a lady.

Q. You think that she was? A. Yes, Sir.

Q. Now, Sir, in regard to your own habits of mind as bearing upon this question of evidence, you have made several statements for publication growing out of this matter, have you not? A. Yes, Sir.

Q. And you have appeared before the Committee and some sort of an examination has been had? A. I appeared before a Committee, but no sort of an examination was had.

Q. Well, you didn't consider it any sort of an examination? A. No, Sir; there was—

Q. There was time occupied about it? A. Oh! yes, a whole Summer.

Q. Not with you? A. Either with me or concerning me.

Q. Well, well; I mean your own presence and examination there? A. No.

Q. Now how is your memory as to dates, and the order and sequence of occurrences? A. I have always thought that my memory of dates was rather below the average.

Q. And in regard to memory have you not stated as the character of your mind that you remembered by pictures? A. Yes, Sir; I remember many things by pictures.

Q. And that was rather the habit of your memory of what was vivid in the shape of a picture being retained—has not that been your expression? A. If I understand what you mean—for instance, I should remember this scene which I now witness rather by the picture itself than by the date; that is to say a year hence, if you endeavored to bring up to my mind to-day's scene, I should do it not by the date but by the picture in my memory.

Q. Have you not said in some of these examinations that you remembered by the reproduction from your imagination? A. I don't think that would be a possible process of the human mind; don't think I could have said it.

Q. Think you said anything of the kind? A. I think we remember through the memory, not the imagination.

#### MR. TILTON'S RELIGION.

Q. Now, in regard to this association and sympathy in religious opinions and feelings with your wife—you have suffered some change in theological opinions and in religious feelings, have you not? A. I have not suffered that change, Sir; the word suffering must not be applied to that change except in its transitory state of suffering for a time.

Q. Well, I don't use suffering in a sense of anguish? A. I have rejoiced in the change.

Q. Well, we will take that—suffering change is being the subject of change I suppose in English—however you have rejoiced in the change? A. Yes, Sir.

Q. Now, at what period of time did this change in your theological opinions, in which you rejoice, occur? A. Well, Sir, to give you an answer that shall be entirely clear, perhaps I may be permitted to say that I was brought up from childhood in the Old School Presbyterian Church of which Dr. Alexander was pastor in New-York; that my earliest religious bent was toward extreme Calvinism; that that tendency in my later years received a good deal of modification, perhaps I might say liberalization through Mr. Beecher's preaching in Plymouth

Church, and that when I approached my thirtieth year my religious views passed through a still greater change in the direction of what might be called Unitarianism, though I am not a member of that body.

Q. Well, that included a surrender of the doctrines of the divinity of Christ and of the atonement, as understood in orthodox or Calvinistic opinions? A. I don't know what you mean by a surrender, Sir.

Q. A parting with? A. Yes, Sir.

Q. It did? A. I do not reject the divinity of Christ; I do not accept the theory of Christ's deity. I do not regard Jesus Christ as the Jehovah who made the world, but there is a very large and sweet sense in which I think any thoughtful man would accept the divinity of Christ.

Q. Well, you gave up the doctrine as it was understood in Calvinistic teachings, in which you had been reared? A. I gave up the doctrine which I could not understand. I never gave up any doctrine which I thoroughly understood.

Q. Yes; I didn't ask you if you understood it, but as it was understood did you or did you not—as it was held? A. As it was held by whom?

Q. In the Calvinistic teaching in which you had been reared? A. Oh! yes, Sir. I abandoned that when I became a member of Plymouth Church.

Q. Well, had this second change that you made in 1865—that comes to about '65 I think, about the time you were thirty? A. Yes, Sir; I won't be positive as to that date.

Q. Well, I am not particular as to the day; perhaps you cannot date from a single day. A. No, Sir.

Q. A gradual process—but by that time that you have mentioned, when you had come to be about thirty, you then gave up the doctrine of the divinity of Christ as held in the orthodox churches, and believed no more than is held in the Unitarian churches? A. Well, I don't know how far that doctrine is held in orthodox churches, and I don't know exactly how far there is a difference in that doctrine as in Unitarian churches. The views which I have concerning the character of Jesus Christ are those which I have already stated—that Jesus Christ was not Jehovah—

Q. No matter if you have already stated them. Do you know enough about it to know whether the concurrence of opinion on these subjects, which prevailed between yourself and your wife when you were married, was broken by this progress or change in your opinions? A. Yes, Sir.

Q. So that by the time you reached the age of thirty you and she no longer agreed in views concerning those doctrines of the Christian religion? A. I should rather say, Sir, that perhaps we had agreed in those features until I was thirty, and that at that time we began to disagree.

Q. Then this change occurred? A. Yes, Sir.

Q. You then disagreed? A. Yes, Sir.

Q. Now, what effect or impression upon your wife and her happiness did this change in your opinions produce? A. In one sense the change in my religious views produced upon her mind a good deal of unhappiness. She wanted me to believe as she did; in fact she wanted me to become a clergyman.

Q. And a clergyman of the faith in which you had both been brought up? A. She wanted me to agree with her.

Q. And you did not? A. I did not.

Q. Now, did it or not cause her great anguish of spirit and great suffering in her life? A. There were times and hours in which she wrestled with herself, and with me and with God, that my views might exactly harmonize with hers.

Q. And hers remained the same that they had been, did not they? A. I think that in two or three essential respects her views have changed; I think, in other words, that she grew to abandon the notion of a hell; she followed the lead of Plymouth Church in that abandonment.

Q. Now, have you not used this expression in this connection: "If I had been a minister, none of this trouble would have come; she was always in sorrow that I was not a minister"? A. Well, Sir, I can't say that she was always in sorrow; her regret was that my professional career had not been that of a clergyman.

#### MR. TILTON'S ATTITUDE TOWARD CHURCHES IN GENERAL.

Q. Well, now, at this time had you not come to such a pitch of feeling in regard to clergymen and churches, that you were actually hostile to them, and despised and hated them? A. There came a period, in 1870, when my views of clergymen changed; not until then.

Q. Well, I have asked you about another period?

Judge Neilson—He says not until then.

Mr. Evarts—Ah! I did not understand you. You say not until then? A. Not until then; no, Sir.

Mr. Evarts—Very well, then, that is an answer.

The Witness—Mr. Evarts, permit me to say that I do not wish to overcloud the fair fame of all clergymen with the sins of one.

Mr. Evarts—Well, I haven't asked you to do so, and we will not take that as part of an answer to any question I put.

Mr. Beach—Well, I don't know; that is a qualification to the answer which he gave, and properly, I think.

Mr. Evarts—Not very important when it is not an answer.

Mr. Beach—Well, I think it is to the other clergymen.

Mr. Evarts—Now, Sir, have you not said that your hatred to churches commenced upon, and because of, the slavery relations of the churches? A. I have never spoken of hatred to the churches. I know what you are reading from, Sir; it is the report of my cross-examination, which I disavow.

Mr. Evarts—No matter what I am reading from; it is for you to answer the questions which I put you.

Mr. Beach—Well, it is proper for him to speak of a time when he used that term.

The Witness—I took this ground, that, during the anti-slavery controversy, I was an extreme Abolitionist, and the great enemy that we had to encounter in our labors as Abolitionists was the Christian Church, and the Rev. Albert Barnes of Philadelphia, the author of "Barnes's Notes," said distinctly, and it was a watchword of our enterprise, "The American church is the bulwark of American slavery." Therefore we struck at the church for the sake of



striking asunder the slave's chain. In that sense I was opposed to ecclesiastical organizations; I had no hatred to individual churches, or members, or ministers.

Q. Well, of course we will assume that in regard to individuals. You did under these influences of a public nature that you have spoken of, come to have feelings of hostility and bitterness concerning church organizations, did you not? A. Concerning ecclesiastical organizations, concerning churches, not in their religious features, but in their ecclesiastical features; concerning churches as governing bodies.

Q. Now, in that connection did you not come to the feeling and opinion of despising ministers generally, and the church as it existed in this country from these antagonisms? A. I thought that in the early stages of the anti-slavery movement the clergy, like all other professional men, were, like Erasmus of old, cowardly; that they were not leaders of public sentiment, but rather the followers of it. There were many noble and conspicuous exceptions to that, and in those days Mr. Beecher himself was a shining example.

Q. Nevertheless the point comes—did you not, from these motives, and under those antagonisms, come into hostility or hatred of the churches and contempt for the ministers that were of the position that you have ascribed generally to the clergy? A. I think I should answer your question no, Sir, and yet if I could explain I could give you more fully my views.

Q. Well, I have no objection to your explaining. A. I think this—that when any great public measure arises and is new; when any great reform starts which the world needs, the last help it generally gets is from the old conservative organizations called churches; that is what I mean.

Q. And from the ministers of those churches? A. Well, from the churches as bodies.

Q. Yes; and the ministers of them? A. I don't know that it applies any more particularly to the ministers than it does to other members.

Q. Other members of the church? A. Yes, Sir.

Q. Collectively. Well now these feelings of yours in this regard were not concealed from your wife—they were known to her, were they not? A. These views were taught us in Plymouth Church; that was the doctrine of Plymouth Church. My wife believed it and I believed it, and we all despised the slaveholding Christianity of that day; we were all of one mind concerning it. Mr. Beecher preached against it. He used to say frequently that he was ashamed of his calling; that is to say, that he was ashamed of the men who were in it because they were cowardly.

#### MR. TILTON'S FIRST DISPUTES WITH MR. BEECHER.

Q. Very well; now when did you first come to any occasion of public contest or disagreement with Mr. Beecher, in the course of your and his public life and employment? A. Well, Sir; we had a friendly discussion in 1859 or 1861, concerning the disposition of some missionary funds.

Q. That was in Plymouth Church, wasn't it? A. Yes, Sir.

Q. And it was a somewhat animated and serious dissent between you, wasn't it? A. Well, Sir, it was like the dissent between you and Mr. Beach, entirely fraternal. It was a con-

test, but it was marked with great friendliness; there was no enmity between us.

Mr. Beach—What date was that? A. That, I think, was in the Winter of 1859 or 1860, possibly '60 and '61.

Q. Well, these were between yours and Mr. Beecher's opinions, not as representatives of clients or third persons? A. It was not a clash of opinion, Sir; we were alike in opinion. It was simply a question as to whether Plymouth Church, as an anti-slavery organization, ought to contribute its missionary funds to a society out West that held men in bondage. I took the ground that our church ought not to do so. He took the ground that our church ought to do so, and we discussed it.

Q. The details of it are not important; but it was an animated and somewhat severe dissent between you, wasn't it? A. It was as severe as this: he met me just before I went into the pulpit that night to make my speech, patted me on the shoulder, and said, "Theodore, go and do as well as you can;" and the next day, after the discussion was over, he came around to see me, and said, "Theodore, I am proud of you." That was the severity of the discussion.

Q. Oh! I don't mean personal animosity; I speak of your difference of opinion on a public question. Don't you recognize that fact now? A. I don't recognize the applicability of your word "severity" as applied to a difference of opinion.

Q. I have asked you for the first; was that the first occasion of any public difference or debate of any serious character between you? A. I don't know but that on several occasions previous to that, in the discussions in the church meetings, I may have taken ground one way and he another on certain topics. He always encouraged the utmost latitude of discussion.

Q. If there was nothing noticeable, I don't care to inquire into it, and so you may have— A. Oh! there never was a more friendly discussion than the one between Mr. Beecher and myself concerning those missionary funds.

Q. And in that discussion you were of opposing opinions, and so continued to be notwithstanding, for the— A. No, Sir; we were not of opposing opinions; we were of the same opinions, but the question was whether we could, as anti-slavery men, apply those opinions to a certain particular case.

Q. Well, I mean opposing opinions concerning the subject of actual debate; that was so, wasn't it? A. Yes; the difference being as to whether the money should be applied or should not be applied; it did not reach to a difference on moral or religious views—a question of the distribution of money.

Q. Now, after this, did there arise an occasion of political difference between you, as public men, on a question that generally you had concurred in before? A. How soon after this?

Q. O, I can't tell when it was—not connected with this. A. I don't remember that there was any serious difference between Mr. Beecher and myself on any political question until he took the ground—in a sermon, I think, in 1860 perhaps—no, perhaps later—that a military emancipation was impossible. I resisted that sermon. A military emancipation was afterward wrought out. I think that is the first disagreement we had as to political views.

Q. Well, then, afterwards there was a Cleveland affair, was there not? A. Yes, Sir.

Q. When was that? A. I don't remember the year.

Q. Well, can't you tell us about when it was in connection with the public events or affairs of politics? A. Well, Sir, I am ashamed to say that I don't fix it in the almanac of my memory. Somebody here present, though, must know the date of the Cleveland Convention.

Q. Well, it was at the time of the Cleveland Convention, wasn't it? A. Yes, Sir.

Q. And what was that Convention, a political Convention? A. Well, I can't—yes, it was a political Convention—O! yes.

Q. It was in connection with the politics of the country? A. Yes, Sir.

Q. And there you took decided, opposite grounds to him, did you not? A. Yes, Sir; very decided.

Q. And was that a broad, a severe difference of opinion? A. Yes, Sir.

Q. That was? A. I thought he was wrong, and I said so.

Mr. Evarts—We will stop at this stage, if your Honor please. The Court then adjourned until 11 o'clock on Thursday.

## NINETEENTH DAY'S PROCEEDINGS.

### MR. TILTON'S FURTHER CROSS-EXAMINATION.

POEMS, EDITORIALS AND LETTERS ON LOVE, MARRIAGE AND POLITICS READ IN COURT—THE SOCIAL AND PUBLIC RELATIONS OF THE WITNESS TO MR. BEECHER—THE WOODHULL BIOGRAPHY RULED OUT.

A brilliant light was turned on Thursday upon the obscure and sensational events of the great trial now pending in Brooklyn. A stranger not familiar with court procedure might in the morning easily have thought himself in a place of amusement, for Mr. Tilton's examination and its surroundings resembled more a literary entertainment than a trial. The audience was certainly a large and an appreciative one, while those who interested them were prominent and able. The programme did not lack novelty. The reading of a beautiful song of love written by Mr. Tilton and read by Mr. Evarts; discussions about politics, woman's rights, and free love; newspaper satires and editorials on the same subjects, and a long debate on the rights of editors, a pleasant vein of humor running through the whole—this is an outline of the progress made. During the forenoon only the brighter, fresher pictures of Mr. Tilton's and Mr. Beecher's intercourse were shown. Its darker phases were for a time hidden, but during the last hour of the proceedings the curtain was drawn aside and events bearing

more directly on the scandal were dealt with. Mr. Evarts first produced a copy of the letter of Mr. Beecher to the Cleveland Convention in 1866, which Mr. Tilton so severely condemned at the time. The witness declined to identify it because it was a newspaper slip and had many corrections in the margin, and took occasion to say that in that controversy Mr. Beecher and Mr. Evarts were on the side of President Johnson, while he was on the other side. Mr. Evarts rebuked Mr. Tilton very sharply, saying that his name should not be dragged in. The testimony of this witness frequently brings Mr. Beecher's name before the jury. When he was asked to date the time when he began to take an interest in the cause of woman's rights, he said that it was after he heard Mr. Beecher's speech on that subject at the Cooper Institute; and again he said, "I modified my views upon social questions and have published my principal denunciations of social crimes since Mr. Beecher's invasion of my home came to my knowledge in 1870." Several times afterward Mr. Beecher's name was thus connected with various matters in which Mr. Tilton had taken an interest.

Mr. Evarts asked the witness when he entertained discussions on the "new social opinions" in regard to the social connection of sexes. Mr. Tilton inquired what was meant by the "new social opinions." Mr. Evarts did not wish to apply the opprobrious term free love, and so he defined it in the following admirable words: "The opinions that assert greater freedom in the matter of marriage and its dissolution, and its maintenance only during continued attraction or affection."

Considerable amusement was provoked when Mr. Shearman approached the witness staggering under the weight of a large file of *The Independent* for 1870. Mr. Beach laughingly went to his assistance, and they held the volume before Mr. Tilton, who was asked to identify the leading editorial entitled "Love, Marriage, and Divorce;" this he did, and it was read by Mr. Shearman. A satire directed at Mr. Tilton in *The Hearth and Home* was next read. It first praised him very highly as an orator and writer, speaking of him as a children's friend, and quoting Mr. Tilton's little nursery rhyme beginning "Baby bly, here's a fly," and other poems; the article afterward expressed grief for his connection with Mrs. Woodhull, and closed with a pretended obituary of him. Mr. Tilton's reply to that article was also read; it contained a reference to Mrs. Woodhull.



Perhaps the most entertaining part of the entire proceedings was the reading by Mr. Evarts of Mr. Tilton's exquisite poem, entitled "French with a Master," each verse of which closes with the words *Aimer, aimer. c'est à vivre* (To love, to love, this it is to live). The poem lost nothing in the hands of the reader. The constant repetition of the words *Aimer, aimer, c'est à vivre* caused a ripple of amusement to run throughout the room, which swelled each time the line was repeated, until, when the last verse closed, there was an outright burst of laughter, in which the Judge, the jury, Mr. Evarts, and Mr. Tilton joined heartily. After quiet had been restored, a copy of *The Golden Age* containing Mr. Greeley's letter on the question of marriage and Mr. Tilton's reply to it was produced, and it gave Mr. Fullerton an opportunity to show his readiness at reply. The Judge had ruled that the defense were not obliged to introduce every part of those letters, adding to Mr. Fullerton that it might be a burden to him to read them in the re-direct examination. "Ah, no," rejoined the counselor, "it is never a burden to me to read anything Mr. Tilton has written." As Mr. Shearman began to read, Mr. Tilton asked Mr. Evarts as a personal favor to read the article. The latter declined, however, saying that "it would be contempt of court."

An animated and interesting discussion arose at this point regarding the rights and responsibilities of editors and publishers, caused by an attempt to read a paragraph quoted from a Troy newspaper in *The Golden Age*, giving a part of a lecture by Mrs. Woodhull. Mr. Tilton laid down the precept that "sole editors are those who least read their own paper," and he added; "*The Golden Age*, like any fair-minded or liberal newspaper, prints the news. That is an extract from a speech of Mrs. Woodhull's, printed without comment, exactly as it would in the same column print an extract from the speech of Mr. Evarts." Mr. Evarts, with a wry face, answered that that would be an empty compliment, as nothing of that kind was ever done by him, and Mr. Beach laughingly said to him, "It proves you cannot save yourself from distinction, no matter how you try." The paragraph was ruled out. An article in *The Golden Age*, which Mr. Tilton said he did not write, was then shown. A rather remarkable incident occurred at this moment, in Mr. Tilton's calling his examiner to his side and speaking confidentially to him for several moments. Mr. Evarts then walked back and resumed his examination, in the course of which Mr. Tilton appealed to the Judge and asked

that he be not obliged to give the name of the writer of the last-named article, as it was a lady. He said that he had just given Mr. Evarts the hint that the writer was a lady. Mr. Evarts retorted that he had not divulged it. The witness made a rejoinder, and while Mr. Evarts was replying to him, Mr. Beach, glancing at the clock which then indicated that it was exactly 1 o'clock, suggested that Mr. Evarts and the witness be allowed to continue the discussion during recess.

The afternoon session began with a discussion over the introduction of Mr. Tilton's biography of Mrs. Woodhull. The book was ruled out by Judge Neilson. The Cleveland letter in perfect form was next introduced and read by ex-Judge Porter, which is the first public service in the case he has performed since his illness. The relations between Mr. Beecher and Mr. Tilton were again made the subject of investigation. Mr. Tilton thought, when he first became acquainted with Mr. Beecher, that the latter was "a big boy, companionable and winning." "Guileless?" queried Mr. Evarts. "No. The craftiest persons I know of are boys—newsboys, for instance." In later years, Mr. Tilton said, "the fine gold of his idol became dimmed." Mr. Beecher's visits to the house of Mr. Tilton were the next subject entered upon, and it was shown that Mr. Beecher had at first to be urged by Mr. Tilton to visit the latter's wife. The witness paid an enthusiastic tribute to Francis D. Moulton, saying that he was the successor of Sir Philip Sydney. At this point the examination was broken off for the day.

Judge Neilson was more lenient than usual on Thursday with the laughter in the court-room; partly, perhaps, because it was in the main confined to the lawyers and those most interested in the suit, and partly because the wit and humor of the day were irresistible. He reproofed the audience only once, and then very gently. His leniency was not abused, however, and the spectators were very orderly during the day, except just before the adjournment of the court, when a considerable disturbance was made by several persons leaving the room together.

## THE PROCEEDINGS—VERBATIM.

### A BRILLIANT CROSS-EXAMINATION.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Tilton was recalled, and his cross-examination was continued by Mr. Evarts.

Mr. Evarts—[Paper handed to witness.] Mr. Tilton, that

seems to be rather an imperfect print of a document. Please look at that and see if that is the political situation, and that the document called the Cleveland letter. It seems to be a Western print of some kind, and been corrected by city paper; but we could not get a file taken from the office without more trouble than it was worth. A. Well, Sir, I should not like to give you an opinion upon that.

Q. Well, I don't ask your literary opinion; I ask you to look at that, if that is the Cleveland letter, as it purports to be—if that is the situation and that the action on Mr. Beecher's part which we were last talking about when we left the stand? A. Do you mean is this the letter which Mr. Beecher sent to the Cleveland Convention?

Q. Yes, the Cleveland Convention. A. Well, Sir, I have not read that letter since that time. Here are three sheets marked with one hundred corrections. I should not like to say whether it was or not.

Q. Well, can you, judging for yourself by looking at that, recall enough of the situation to know whether that was the Cleveland letter? A. Well, Sir, I should not.

Q. Could not do that? A. I could not say whether that was or not. If it were my letter I should pronounce upon it, but as it is another man's I don't want to give an opinion.

Q. And you cannot say then, whether, looking at this paper, you can see from it that this was the occasion of that political difference between you and Mr. Beecher? A. That appears to be a letter addressed by Mr. Beecher to that Convention, which somebody has corrected, marking on the margin corrections to the number, I should think, of a hundred. Whether the text is the original, and whether the corrections belong to it, or whether it is genuine, I am unable to say, since I was not the author of it.

Q. Now, I have not asked you any of those questions, but have asked whether, by looking at this paper, you can recall to mind whether or no this is the situation in politics which this letter refers to that was the subject of the dissent between Mr. Beecher and yourself? A. The subject of dissent between Mr. Beecher and myself grew out of the political situation at that time; Mr. Beecher and you were on the side of President Johnson, but I was opposed to him; that is all I remember.

Mr. Evarts—Now, Mr. Tilton, I beg you not to introduce me into your testimony. I am not here under your action at all. You are here—

Mr. Beach—I object, Sir, to the gentleman— Wait one moment.

Mr. Evarts [continuing]—To answer my questions.

Mr. Fullerton—Well, put your questions.

Mr. Evarts [continuing]—And under cross-examination, and there is not any occasion for any answers that do not proceed from a question.

The Witness—I thought I was giving you a very direct answer.

Judge Neilson—The practice is to answer the question put as distinctly as you find yourself able to do, and not refer to the counsel in your answer.

Mr. Beach—Yes, Sir; but the question was in regard to the political situation at the time of the difference between Mr.

Beecher and himself, and as Mr. Evarts was a principal part of that political situation, it was not improper for the witness to refer to it.

Mr. Evarts—Why, I didn't have anything to do with it, that I know.

Mr. Beach—Well, the witness was telling you you did.

Mr. Evarts—Not in the least.

Judge Neilson—Well, you may be forgiven if you had anything to do with it.

Mr. Evarts—Well, these allusions are not of any interest, and I at least do not wish any responsibility for making myself important. [To the witness.] Do you think that by reading what purported to be a letter of Mr. Beecher, as sent to them, you could determine whether or no it was the one that you considered and replied to, or discussed, in your difference with him? A. I do not need, Sir, to hear any letter, true or false, correctly or incorrectly printed, to recall the differences which I had with Mr. Beecher at that time; it was a difference known and read of all men.

Q. Now, for the date of it. A. That I don't remember.

Q. Do you think that it was in August or September, 1866? A. I don't remember, Sir. If you say that is the date I will accept it.

Mr. Evarts—I don't say anything about it; this letter purports to be of that date, but then I supposed you might know a little something about the date of the matter in reference to your mutual affairs. Was it in the year 1866? A. That I do not remember now.

Q. Now, had that discussion a relation to the then current policy or politics of the Republican party, to which you both belonged? A. What discussion do you refer to?

Q. This Cleveland matter? A. I don't remember it as a discussion. Do you mean Mr. Beecher's letter?

Q. No; this situation in politics which you say you don't need to have recalled by Mr. Beecher's letter in order to know what the matter was? A. Well, do I understand you to ask me that a situation in politics has reference to a political matter? Of course it does.

Mr. Evarts—I ask you— Will the stenographer please repeat the question?

THE TRIBUNE stenographer [reading]: "Q. Now, had that discussion a relation to the then current policy or politics of the Republican party, to which you both belonged?" A. Yes, Sir.

#### MR. TILTON DENIES BEING A RADICAL.

Q. And was it a matter of considerable excitement and attention in the councils of the party and of its adherents? A. Yes, Sir; I think the Republican party very generally believed that Mr. Beecher at that time betrayed it.

Judge Neilson—He don't ask you that.

Mr. Evarts—Oh! that answers my question. [To the witness.] The general opinion of the Republican party was that Mr. Beecher then betrayed it? A. Yes, Sir.

Q. You then took quite the opposite and hostile position to that? A. I stood with the main body of the Republican party and made a protest against Mr. Beecher's action.



Q. And did you make his letter and his position a matter of public discussion on your part in the sense that you have now expressed yourself? A. I did, Sir, in a very direct manner.

Q. Now, in both these differences that you have spoken of—in the discussion about the application of the funds of the church in reference to a charitable society, and this about the crisis in politics, if we may call it so, of 1866—were you on what was considered and called the more radical side and view, and Mr. Beecher the other way? A. No, Sir; I was then with the general bulk and body of the Republican party, and Mr. Beecher was in a small wing that went over to the support of Mr. Johnson. The radicals in politics were far ahead of both of us.

Q. Now, about the church—about the missionary society—that hadn't anything to do— A. What was your question about that?

Q. Whether you, on that question of the missionary society—you know what I refer to. A. Yes, Sir.

Q. The differences you had—whether you there were on the more radical side and Mr. Beecher on what was called the more conservative? A. No, Sir; I was on the true, solid and old-fashioned conservative ground, and all the liberal members of the missionary society sustained me in it, and printed my speech on that occasion for general distribution—stood on the early ground of the fathers.

Q. Well, there you had, as you think, the support of the greater portion of the good opinion of the party or the community? A. Of the religious community; yes, Sir.

Q. And in the other of the political community? A. Yes, Sir.

Q. Now, from that time forward, were there any particular public questions or occasions which brought you into public antagonism? A. No, Sir; not that I remember, and I think there were none.

#### WOMEN'S RIGHTS AND ITS EARLY ADVOCATES.

Q. Now, Sir, how early did you take part in the movements in reference to women's rights, or woman suffrage, or that topic of public consideration? A. I think that shortly after Mr. Beecher made a speech in Cooper Institute, declaring for women's rights, Mrs. Tilton said that I ought to join in that enterprise, that it was right and proper, and I entered in it.

Q. You need not mention what Mrs. Tilton said; I ask to have that struck out, if your Honor please.

Judge Neilson—Yes.

Q. I ask you a certain time, and only desire that you will consider the question? A. Well, the best date that I can give you is to go back to Mr. Beecher's public declarations in Cooper Institute. He made a speech there which was printed as a tract. I rather think that that was the beginning of my espousal of that cause. If you know the date of that, it begins there.

A. Well, I am sure I don't know; I never had one. A. Oh! yes, Sir, he made a very magnificent speech on that subject.

Q. Well, you know it but I don't. Now the point is to get the date, if I can. If you will remember something of which you can get a date in order to remember that date? A. Well, I

remember that occasion, Sir; I don't remember the date of it. I told you yesterday that I remembered occasions much better than dates.

Q. Have you any idea about when it was, in the course of years? A. Fifteen years ago, I should think, at a rough guess.

Q. Well, that is about 1860? A. I think it was before the war; it may have been twenty years ago, for aught I know.

Q. Well, on that question were you on the side of the advanced opinions in regard to women's rights and suffrage, etc.? A. Well, I suppose that all persons who have espoused the cause of women's suffrage may, in one sense, be regarded as on the side of advanced opinions. In so far as that is true, I was on that side.

Q. You were in the advanced opinions on that subject? A. Well, there was only one opinion on that subject.

Mr. Beach—On what subject?

Mr. Evarts—Women's rights and women's suffrage—there was but one? A. There was but one opinion on that subject; and the great world regarded those who held it as being in the advance; I suppose it may be naturally called, properly called, an advanced opinion.

Q. Well, then, from the best faculty that you have of understanding my question—advancement—you think so; and that you were in favor of the advanced opinions on that subject? A. Well, Sir, I was in favor of woman suffrage, if that is an advanced opinion. It is a pretty old one now.

Q. Now, with whom among the votaries or champions of that opinion did your espousal of it bring you in connection? A. Chiefly with Henry Ward Beecher and Mrs. Elizabeth Tilton, and all the other advocates of it who came up afterward and in due order.

Q. You had known both those persons before, had you not? A. Before what?

Q. Before you went into this movement? A. Yes, Sir; I had known them from childhood.

Q. Now, with what other persons did your association or espousal of this cause bring you into connection? A. Well, Sir, I should think sooner or later in association more or less intimate with a thousand writers and speakers, and advocates and thinkers, good men and women who held that view.

Q. All eminent? A. No, Sir; there are not a thousand eminent people in the country.

Q. Well, will you give us the names of some of the more eminent and noticeable of them? A. Gen. Butler was one, Chief-Justice Chase was another, Mrs. H. B. Stanton was another, Isabella Beecher Hooker was another, Lucretia Mott was another, Wendell Phillips was another, William Lloyd Garrison was another, Anna Dickinson was another; why, Sir, if I should write that goodly catalogue it would take me a long time.

Q. Well, did you name Miss Anthony among them? A. I have forgotten whether I did or not; I ought to name her at all events.

Q. Intended? A. No list of those advocates ought to leave out her name.

Q. Exactly. Now, through what channels of public influence of the press or otherwise, did you advocate that cause?

A. Through *The Independent*, and through all the journals that I have had any control of, and the public platform.

Mr. Beach—And tracts?

Q. Did you publish tracts also? A. Oh! yes; down in the late times, after it got popular.

MR. TILTON'S OPINIONS ABOUT DIVORCE.

Q. Now, Mr. Tilton, at what period, if at all, did you entertain discussions in any public prints of which you had control of the new social opinions and views in regard to the regulation of the social connections of the sexes? A. Well, Sir, will you tell me a little more distinctly what you mean by "the new social opinions?"

Q. Well, I don't wish to give it an opprobrious name. nor do I wish to characterize it improperly, but the opinions that concern greater freedom in respect of marriage and its dissolution, and its maintenance only during continued attraction or affection, and not permanently after those sentiments had changed? A. Well, Sir, I think the chief denunciations which I have made against looseness in the marriage relations have been published since Mr. Beecher invaded my house in 1870. My attention had not been specially called to the subject before that. I afterwards published some tracts.

Q. Now, will you give us the time in which you had given place to discussions in any journal under your direction in favor of the liberality of divorce and looseness of marriage? A. Yes, Sir; the date of that began with Mr. Beecher's performance of the Richardson and McFarland marriage in the Astor House. I defended him for that in *The Independent*. After I established *The Golden Age* I admitted large discussion in favor of liberality of divorce. Can you oblige me with the date of that performance?

Mr. Evarts—I know nothing whatever about that, if you ask for information.

The Witness—I ask for the date.

Mr. Evarts—I don't know anything about it.

Mr. Beach—He is just as bad at dates as you are.

Mr. Evarts—No; I am not under examination about things in which I have taken part.

The Witness—Well, I took no part in that ceremony.

Mr. Evarts—Well, you referred to it, but I prefer not to have these discussions; I will endeavor to be polite whenever you ask for information outside of the case, but anything further—

Mr. Shearman—[Handing witness a large file of *The Independent*.] *Independent* of Dec. 1st, 1870; look at that article. A. Yes, Sir; I see it.

Mr. Beach—[To Mr. Shearman]. I will help you, Mr. Shearman. [Laughter.]

Mr. Shearman—I am quite able to stand it; I am only afraid of troubling the reporters.

Mr. Evarts—[To Mr. Beach.] I did not know that you had got into position.

Mr. Beach—I have.

Mr. Evarts—Mr. Tilton cannot see it so far off.

The Witness—I don't need to see it.

Mr. Evarts—You looked at that article under the date of that issue? A. Yes, Sir; I see it.

Q. You were the editor at that time, were you not? A. Yes, Sir.

Q. That article was published as the leading editorial of that day, was it not? A. Well, yes, Sir; there it is; it speaks for itself.

Q. And was it written by you? A. It was, Sir.

Mr. Shearman—I now read from *The Independent* of December 1st, 1870. The column reads as follows:

*The Independent.*

THEODORE TILTON, Editor.

HENRY C. BOWEN, Publisher and Proprietor.

NEW-YORK, December 1, 1870.

LOVE, MARRIAGE AND DIVORCE.

"To love, to love—this is to live."

So sang a poet of France. If this is French sentiment, it is also apostolic philosophy.

"He that hath loved another," said St. Paul, "hath fulfilled the law." And, as if to give to this truth a stamp of universal currency he recoinced it into the golden text, "Love is the fulfilling of the law." This is another way of saying that love is the supreme function of life.

But what is love? Who has analyzed it, of what gossamer is it woven or out of what adamant is it hewn? What are its quintessential elements? and especially does it outlive life or must it die with death?

The poets sing a various song on this wondrous theme—jarring their harps to a strife of clashing sounds. Here, for instance, is William Morris, making Andromeda, in "The Earthly Paradise," say to Perseus:

"Oh, love, to think that love can pass away!

That, soon or late, to us shall come a day

When this shall be forgotten! E'en this kiss,

That makes us now forget the high God's bliss,

And sons of men, with all their miserie."

And, furthermore, in the same poem:

"Love while ye may: if twain grow into one,

'Tis for a little while—the time goes by.

No hatred 'twixt the pair of friends doth lie;

No trouble break their hearts; and yet, and yet,

How could it be? We strove not to forget;

Rather in vain to that old time we clung;

Its hopes and wishes round our hearts we hung;

We played old parts; we used old names. In vain.

We go our ways, and twain once more are twain."

But, as if to give a sweet lie to all this doleful prophecy, Mrs. Browning, the St. Cecilia of her sex, exclaims:

"Say never, ye loved ONCE!

God is too near above, the grave below.

And all our moments go

Too quickly past our souls, for saying so."

\* \* \* \* \*

"Love strikes one hour—LOVE. Those never loved

Who dreamed that they loved once."

To which let us add the following snatch from a German song:

"Child, tell me how love cometh?

It comes unsought, unsent.

And tell me how love goeth?

That was not love which went."

Now, if it could be settled that human love, is, in its essence, immortal; that death does not cut, nor the grave rot the silken cord; then, in approaching the problem of marriages, we could definitely say: "There is but one bond, and it knows no breaking; it binds two souls for time and eternity, so that nothing, either in this world or the next, can divide them from each other, any more than either can be divided from itself. It creates and justifies the instinctiveness exclusiveness—the selfish selfishness—whereby love claims its own and no;



another's; yearning only for its only mate. It gives a reason for one of the prejudices which many hold without reason; we mean the building of a second marriage like a monument on the sepulchre on the first."

But the common voice of mankind replies, "Marriage is dissolved by death." Now, of the soul's dearest passion this may be a right or a wrong philosophy; but accepting this universal opinion as correctly interpreting our inherent nature, the question arises, since marriage is dissolved by death, is it dissoluble by anything else? If so, by what?

To answer what breaks we must inquire what makes the marriage bond.

The Divine Moralist who preached the Sermon on the Mount when He said, "Be ye therefore perfect, even as your Father in heaven is perfect," held up an ideal of human character impossible of mortal attainment—the despair of flesh-clogged souls. In like manner, in the few and fragmentary notes which his biographers have saved of his utterances on marriage He holds up an ideal, the highest ever conceived, beautiful to struggle after, but impossible to attain. He did not rest marriage on the mere legal union of two persons whom the law, uniting, enacts to be one flesh; but transcending this tie and hallowing it, He taught a spiritual union, which should be so subtle in its willing band, so exclusive in its mutual allegiance, and so reverent of its married mate that "the brief indulgence of a single vagrant fancy" was an infidelity to such wedlock. Who can abide this test? Judged by so immaculate a morality, "there is none good; no, not one."

Nevertheless, as the only just ideal of human character is after all, the divine, and nothing short of it, so the only right ideal of a true marriage is impossible—the perfect picture which Christ sketched. But as there is an approximate realization of this character, notwithstanding the weaknesses of human nature, so also there is a reasonable approach to this marriage, notwithstanding the vicissitudes of human love. Thus a husband and wife—if they have rich hearts and generous minds—if their sympathies interflow like confluent streams—may love each other with such devotion, with such exaltation, with such coronation as to attain to the royal estate which Shakespeare called "a measureless content;" realizing in each a faithfulness of love that could not possibly betray or deceive its other self; a love so infinite that it could contain only its own fullness; a love which, like the sea, could never depart out of its own bosom.

Now, this is the love and the only love that spiritually constitutes marriage; and marriage, however legally enacted, yet without this "spirit of unity" to "create its bond of peace" can be, under Christ's theory, nothing but divorce.

The greatest question which has been propounded to modern society is: What is to be the legal status and what the social fate of persons who find themselves married, but not mated? The common and pusillanimous answer is: To remain in a bondage which it is ostracism to break. But a just moral sense, piercing a sham morality, which is only another name for custom, asks, What excuse can be given to God and to virtue for keeping two human beings in an enforced union which each knows to be degrading to both their souls? A public opinion which compels the juxtaposition, or which forbids the disconnection of an unmated pair, who are tied, not knit—chained, not wedded—violates the ethics of Him who, preaching from the mountain-top of morals, taught so terrible a distinction between love and lust. Marriage without love is a sin against God—a sin which, like other sins, is to be repented of, ceased from and put away. No matter with what solemn ceremony the twain may have been made one, yet, when love departs, then marriage ceases, and divorce begins. This is the essence of Christ's idea. To say that He granted divorce only for a gross and fleshly crime is to forget that He called the eye a paramour and the heart of wanton's bed. Even granting that one of his speeches

seems to call adultery the only divorce, yet in His other maxims in illustrating what He meant by adultery, He set forth an ideal of so faithful a fidelity that most marriages estimated by this standard would be proved adulterous and be pronounced by His withering judgment null and void.

How shallow, then, it is to say with the Roman Church, that there shall be no divorce, not even for fleshly lust; or with the Episcopal, no divorce except for just this and this only; or, with the Presbyterian, no divorce except for this and for desertion; or with the Methodist missionary board, no divorce except for these and for heathenism; or, with the civil laws of some of our States, no divorce except for a few of the more common and hideous offenses which daily report themselves to our Courts.

John Milton was right in declaring (we do not quote his words, but only his meaning), that whatever nullifies marriage justifies divorce. With faint echo we repeat the same truth, which, to our mind, seems so true as to be fundamental. Nor, in following Milton, do we wander in a dangerous path. This man was no loose philosopher—no *blasé* gallant—no free lover. For, though his voice thundered for freedom of divorce, it pleaded with sweet eloquence for strictness in marriage. Learning as well as we may from so illustrious a teacher, this journal, with its liberal views on divorce, remains an austere moralist on marriage. It utterly spurns, rejects and repudiates the doctrine of free love. It stands at the very antipodes of this philosophy. It holds that a man and woman whose mutual love is not sufficient to inspire mutual fidelity, prove thereby that they have never known the fullness, purity and all sufficiency of the one love which makes marriage sacred, and which keeps it so. The only marriage worthy to be called by the name of that great sacrament is the exclusive union of one with one, not the patriarch union of one with many, and not the modern *sub-rosa* union of many with each other. Marriage, if it be marriage at all, is the unswerving faithfulness of husband and wife, admitting no intervening mistress for the one, no supplemental paramour for the other.

But this idea (and this idea cannot but be true) carries with it as its logical sequence (and this too cannot but be true) the irresistible conclusion that marriage, if broken, and whether broken by the body or the soul, is divorce. Infidelity of the body is not so great a sin against marriage as the infidelity of the soul. If there is divorce for the one, there should all the more be divorce for the other. Human society needs, for its purification, a more chivalrous fidelity to marriage—a more honorable respect for divorce. A nation without marriage would be without civilization. A nation without divorce must be without virtue. In France, the law tolerates no divorce; and so the people practice universal license. In Prussia, the law opens seven gates of exit from marriage, and so the fashionable standard of morality is almost puritanic.

Now, the proverb warns us that "history is philosophy teaching by example." Apply this philosophic warning to our own land. Our American society is covering itself with a growing mildew of free love. This corroding fungus is everywhere so plain that all eyes are beginning to see it. What is the cause? And what the cure?

The cause is twofold. First, in the injudicious and lamentable haste with which the law is invoked to tie a knot between two persons who only fancy, but have not proved their fitness for each other; and second, in a public opinion which, forbidding the dissolution of such ill made contracts, forces imprisoned spirits, fretting at a captivity from which they cannot openly break, to take covert refuge in secret sin.

The cure is likewise twofold. First, in a higher and holier idea of marriage—including the chastity which should accompany it, the devotion which should foster it, and the love which should hallow it; and next, in public opinion expressed authori-

actively in our civil statutes, enacting that whatever in point of morals nullifies marriage, should in point of law authorize divorce.

God grant that there may come a time in the legislation of our country when the laws of the land shall be founded on the facts of the soul!

Mr. Evarts—[Handing paper to witness.] Will you look at that and say whether you recognize that as a production of yours—I am sure I don't know whether it is or not? A. I should have to compare that with the original. It strikes me on the first glance that it is a garbled copy. I have not read the original since it was first published. I can—

Q. You can verify it, can you? A. I can produce it to you. I don't impute everything to a person because I see it in print. I know nothing about it. It is an imperfect copy, I think.

Q. [Handing paper to witness]: Do you recognize that as *The Graphic* newspaper? A. No, Sir, I do not; it may be so, but I don't recognize it; I can procure for you though, a correct copy if you desire it.

Mr. Evarts—Well, I will. I will have this marked for identification as the paper shown the witness.

Mr. Beach—Oh, no; it is not identified.

Mr. Evarts—It is marked for identification as the paper shown the witness.

Judge Neilson—It is produced as the original until the original is substituted.

Mr. Beach—It should not be marked until it is identified.

Mr. Evarts—We don't mark papers as exhibits until they are identified. I marked this as a paper I have submitted to the witness.

Judge Neilson—So that it may be held until the production of the other paper.

Mr. Evarts—Yes, Sir.

Mr. Evarts—Will you produce that in the morning or after the recess? A. The original was printed in *The Golden Age*, and if it will be any pleasure for you to have it, I will send over and beg the gentleman who owns the paper to procure a copy or else lend you the file.

Mr. Evarts—I don't wish to put you to any unnecessary trouble. This professes to be an entire poem, I think. [Handing paper to witness.] Look at that date and say whether that enables you to remember or not—I don't know anything about it—about the time you wrote it? A. August 1st, 1873. This is the date of an advertisement on the back of the paper.

Mr. Evarts—It only shows that is about the date of the newspaper. Of course it may have been written years before.

Mr. Fullerton—What paper was it published in?

The Witness [To Mr. Evarts]—What question do you wish me to answer?

Mr. Evarts—I only asked you if you can remember now about the date of its being written, whether that assists you anything about it. A. No, Sir; but I can procure for you the original.

Q. And the date? A. Yes, Sir; the paper which contains it.

Q. Will you look at that first article and say if that was written by you? [Handing witness a copy of *The Golden Age*.] A. No, Sir; the first article is a selection from *Hearth and Home*.

Mr. Beach—What was the question?

The Witness—He asked me if the first article was written by me, and I said no.

Mr. Evarts—If you look at it you will see what the text is.

The Witness—The second article was written by me, not the first.

Q. The first was taken from the newspaper, and you wrote underneath it a reply to it? A. A reply to it; yes, Sir.

Mr. Beach—Is that from *The Golden Age*?

Mr. Evarts—From *The Golden Age*.

The Witness—Perhaps I ought to inform you, Mr. Evarts, that that article was one of the numerous devices.

Mr. Evarts—Well, now—

The Witness—Which Mr. Beecher and Mr. Moulton and I entered into.

Mr. Evarts—Wait until I ask you.

Judge Neilson—Wait until the counsel interrogates you.

Mr. Evarts—There will be an opportunity for you to explain on the re-direct examination, anything that I omit.

The Witness—I don't care to make the explanation, Sir.

Mr. Evarts—Very well, then, as we none of us care about it.

Mr. Shearman—I read from *The Golden Age* of October 14th, 1871. There are two articles; one is written in reply to the other. I shall read only a part of that, to which it is a reply—just enough to explain the second. [To Mr. Beach.] Do you say you wish me to read the whole of what Mr. Tilton said?

Mr. Beach—Yes, Sir.

Mr. Shearman [reading]: "*In Memoriam—Theodore Tilton.*"

Mr. Evarts—Well, it is from *The Hearth and Home*.

Mr. Shearman—Yes, Sir; I read from *The Hearth and Home* of October 14th, 1871:

IN MEMORIAM—THEODORE TILTON.

[From *Hearth and Home* October 14, 1871.]

It is with peculiar sadness that we write these words. They recall the vision of the young man who sprang all at once into public favor, giving such evidence of genius as few men have furnished. Writing double-leaded leaders full of force and fire, singing songs full of sweetness, uttering orations full of wit and eloquence, his sunny locks wore at once the "triple crown of editor, orator and poet." Succeeding to the vacant chair of Beecher, he more than filled it. He introduced a new era in religious journalism. In those golden days he made his paper all that the name *Independent* could mean. It bowed neither to sect nor party, and its words scorched a villain in the ranks of its own friends as fearlessly as they did an opponent. The paper under his editorship scorned to follow its party. It led. Like a new knight, the gallant young journalist uttered his battle cry and rode bravely to victory. Men laughed at him, but they followed him. He had a noble ideal of journalism. He wrote witty things against an opponent, but did not use his columns to gratify personal spleen. And when the worst attacks were made upon him he said to a friend, "I must not let these things sour me. I cannot afford to let my own temper become spoiled. And I want to leave journalism better than I found it." His enemies said that he greatly over-estimated his own position. Perhaps he did. But there was no wronged or down-trodden person appealed to him in vain.

Mr. Shearman—The counsel for the plaintiff desire me to read the whole, including the poetry. The Court will pardon me for introducing so much poetry into the case.

He was a singer of sweet songs—songs full of brave catho-



Heity of spirit, full of deep religious feeling, full of high moral sentiment—songs full of lofty patriotism. Nothing shows a man's freshness of heart more than his ability to please children. And from one ocean to the other, little children sang with him that most perfect nursery rhyme which begins :

"Baby Bly,  
Here's a fly;  
Let us watch him, you and I,  
How he crawls  
Up the walls,  
Yet he never falls!  
I believe with those six legs,  
You and I could walk on eggs!  
There he goes  
On his toes,  
Ticking baby's nose!"

In times of patriotic fervor his great "Bell Roland" rang out with no doubtful peal. The religious heart was touched with the sad minor key of such poems as "The Crown of Thorns," in which there is devoutness enough of feeling and wittiness enough of conceit, to make it worthy of Jeremy Taylor. There is a solemn genuine faith in his words,

"So in my heart of stone  
I sepulchre thy death.  
While thoughts of Thee, like roses blown,  
Bring sweetness in their breath.  
"Arise not, Oh my dead!  
As He whom Mary sought,  
And found an empty tomb instead,  
Her spices all for naught.  
"Oh Lord! not so depart  
From my enshrining breast,  
But lie anointed in a heart,  
That by Thy death is blest,  
"Or, if Thou shalt arise,  
Abandon not thy grave.  
But bear it with Thee to the skies,  
A heart that Thou shalt save."

And then he wrote "A Layman's Confession of Faith," every line of which is worthy of quotation in an obituary such as this. There is one passage in it, which in this day of Woodhulls and free love advocacy we cannot forbear quoting :

"I love one woman with a holy fire,  
Whom I revere as priestess of my house;  
I stand with wondering awe before my babes,  
Till they rebuke me to a nobler life."

Never did this young Apollo write more fervently and gracefully than when he spoke of his wife and his home, and it is gratifying to know that his gallant devotion, so often expressed, so gracefully wreathed in his dedication of his poems to the sweetness and sanctity of home life, was an inspiration in the same direction to his crowd of admirers.

It is with inexpressible sadness, for we admired and loved him, that we bring this memorial article to a close. Can it be possible that we shall no more hear that brave voice pleading the cause of right and duty—that we shall no more hear that poetic gift breathing out sweetness, devoutness and purity of feeling. Can it be that he who struck down with remorse his best friend when he thought that friend recreant, shall not live to speak now against those who would defile the sanctuary of the home to which he was so devoted, teaching their doctrines of devils as a cloak to their lust? What would we not give for one stroke of that old scimeter at those who put darkness in the place of light. But we must bear our sorrow, mournfully reflecting on the light so brilliant that has gone out in darkness so utter.

We know there is a pseudo-Tilton who uses the graces of rhetoric to gild the character of a woman about whom it is enough to say that she edits a paper abominable in morals and

coarse in its utterances! There is a Tilton who writes insane things about spirits of ancient Greek orators inspiring the meretricious rhetoric of a woman who advocates free love! There is a Tilton who sees a Golden Age in French Communism. But that is quite another affair. We have hastened to pay our tribute to the memory of Theodore Tilton, ere this later and counterfeit Tilton should cause the world utterly to forget the brave deeds of Theodore Tilton the lamented.

#### MR. TILTON'S REPLY TO THE ABOVE.

To the Editor of *The Hearth and Home*:

MY DEAR SIR: I am fond of wit, even at my own expense. Your clever satire of last week, speaking of me as one dead, and giving me (as Captain Luce of the Arctic had) an opportunity to read, before I did, the estimate which my fellow countrymen will put upon me after my death, has almost tempted me into sending you a retort in kind—just for jest.

But I remember a story told of Dr. Williams and Dr. Emmons—two old Congregational clergymen whom you and I reverence more for their characters than their creeds.

They agreed with each other that as soon as either should die the other should preach the funeral sermon. Dr. Williams shortly afterward retired from the ministry, and, having nothing to do, composed with ornate pen a flowery and funeral tribute to his friend—under some such heading, I suppose, as "In Memoriam—Dr. Emmons." When the brilliant panegyric was finished, its author carried it to Dr. Emmons (just as you sent me last week's *Hearth and Home*) and treated him (as you treated me) to an *ante-mortem* monument to undeparted worth. The strain of compliment being high, Dr. Emmons, who thought he was getting more praise than he deserved, interrupted the reading by saying, "Is there not too much encomium?"—to which the reader suddenly replied, "Hush, Dr. Emmons, you are dead!"

But Dr. Emmons was not dead to the fine flattery of his friend, nor am I to yours. Furthermore, as in my case, the praise is tempered with blame, the latter, perhaps, being better deserved than the former. I will substitute for my first thought, which was fun, a sober second thought, full of serious intent.

If, therefore, amid the roses which you have heaped upon me, I can detect the real thorns or exact points of your criticism, they seem to be—

First. That I am an advocate of "Free Love."

No, my friend, you are wrong in this supposition. When and where have I ever advocated "free love?" In what writings or speeches of mine have you ever seen any vindication, or anything but condemnation, of the idea popularly known as "free love?" I have characterized this phrase as "a beautiful term designating a revolting thing." The original coiners of the word flung it as a reproach at certain socialists; and they meant by it the promiscuous intermingling or commerce of the sexes—an idea, which, to me, is an affront to our higher human nature—a degrading of men and women to a level with a lower world. "Free love," thus defined and practiced, is treason to good morals; and I am therefore opposed to it or to any other baseness.

But, in justice to a number of noble reformers (to whom more honor will be rendered in the next generation than they can look for in this), I ought to say that this term is used by them in a technical sense, as meaning "love, free from the civil law;" or, in other words, that marriage and divorce should be (at least to a great extent) removed from the realm of legislation and left (as religion is left in free countries) to be governed by its own higher law. If this definition shall be popularly and permanently attached to the term "free love," then, as I thoroughly believe in this idea, I shall cheerfully accept this designation.

My opinions on marriage and divorce are the same now as when I first formed them, which was during my college days, by reading the writings of John Milton. I teach no different doctrines now from those which I first faintly sounded on en-

thing (somewhat premature) into public life. Milton's essay on Divorce—which I studied for style and logic, and with a boy's natural repugnance for the whole subject—became, by that study, as much a part of my intellectual constitution as Blackstone's lectures are to a lawyer. If that great essay—by one of the first minds of the world—has ever been answered, I have not seen the answer. True, my friend Mr. Greeley sometimes overthrows it with a hasty paragraph or two, but it will live after THE TRIBUNE is forgotten.

Secondly, you chide me for vindicating a lady who has suffered more private sorrow, and more public obloquy than fall to the lot of ordinary mortals. This criticism I accept with pride. When I know a woman well, and believe her to be honorable and pure, and she is attacked by "the mob of gentlemen who write with ease," and is reviled by slanderers who strike at her from the safe shelter of an anonymous press, I hope I shall never be coward enough to withhold my own poor pen from her defense. I have an extensive acquaintance among public men and women of our time, including many whom I believe to be uncommonly pure and white in their moral and social character; for instance, Lucretia Mott, Horace Greeley, Mrs. Stanton, Charles Sumner, Harriet Beecher Stowe, Wendell Phillips, Laura Curtis Bullard, and others; and among these—the peer of any in all that constitutes personal purity of life—I place Victoria C. Woodhull. I speak from knowledge; I weigh my words; I mean what I say; and I stand by it. But I am ashamed of my many brethren of the press who, without evidence, without provocation, and without inquiry, have made haste to strike a woman whose private life is a white lily of blamelessness, and who, if altogether a fanatic, is also altogether a Christian.

Thirdly, you call me a Spiritualist. Well, so was President Lincoln. Why should you assassinate me on this account? There are more Spiritualists than Methodists; and the one sect has just as much right to its opinions as the other—at least, in a country which professes to tolerate all religions. But the truth is, that although I have seen many marvels of so-called spirit manifestations, I have no satisfactory theory on the subject; and I know too little of Spiritualism to write with authority concerning it, or even to bear the honorable name of membership in its fraternity. But I think I have enough fairness of mind to write a biography of Bishop Simpson from a Methodist point of view, or of Elder Evans from a Shaker point of view, or of Mrs. Woodhull from a Spiritualistic point of view—even though I am not a Methodist, or Shaker, or Spiritualist.

Fourthly, speaking like a Paris prefect of police, you denounce me as a Communist. Yes, I am. I accept your indictment as I would a rosette; and wear it in my button-hole. I never saw Henri Delescluze, but he was a man after my own heart, and I mourn him as I would any other hero or martyr. Communism is not agrarianism, as many people ignorantly imagine; it is republicanism, and Americans ought everywhere to honor it. The Commune offered to France what the Republic refused it—namely, local self-government. Among all the semi-successful frauds of our time, the greatest is the pretended Republic of which Thiers is at the head to-day, and of which I trust he will be at the foot to-morrow. The atrocities in Paris did not come from the Commune, but from Versailles. It was the Commune, not the Republic, that should have triumphed. A few writers and speakers among us have had the courage to applaud the Commune; such as Wendell Phillips, Charles A. Dana, George Wilkes and John Russell Young; and I rejoice to remember that not one of these clear-headed men was ahead of myself, either with voice or pen, in vindicating the noblest attempt at political liberty which Europe ever saw or crushed. But the Commune will yet arise and reign! God speed it!

In conclusion, let me add that I have never been a contributor

to *Hearth and Home*, nor do I know that any of my writings (except your last week's quotations from the poems of my "green and salad days,") have ever been reprinted in your columns; but if you will give me a brotherly hint that I shall be welcome to the space of a second letter for the purpose of stating my views on the social questions now stirring the public pulse, I will gladly enable your readers to judge for themselves whether these views are right or wrong.

Meanwhile, for my own "hearth and home" (to which you so kindly allude) I send to yours (at which all the public find a weekly welcome) the fraternal greetings of yours, forgivingly,  
THEODORE TILTON.

[Marked "Exhibit 53."]

#### ANOTHER POEM ADMITTED.

Mr. Evarts—My learned friends say that this effusion may be read now [referring to the poem "French with a Master"] to be corrected afterwards, if it is found to be different. It is apparently complete. [Reading:]

#### FRENCH WITH A MASTER.

A NEW POEM BY THEODORE TILTON.

*Aimer, aimer, c'est à vivre,  
[To love, to love, this is it to live.]*

Teach you French? I will, my dear!  
Sit down and con your lesson here.  
What did Adam say to Eve?  
*Aimer, aimer, c'est à vivre.*

Don't pronounce the last word long;  
Make it short to suit the song;  
Rhyme it to your flowing sleeve,  
*Aimer, aimer, c'est à vivre.*

Sleeve, I said, but what's the harm  
If I really meant your arm?  
Mine shall twine it (by your leave),  
*Aimer, aimer, c'est à vivre.*

Learning French is full of slips;  
Do as I do with the lips;  
Here's the right way, you perceive,  
*Aimer, aimer, c'est à vivre.*

French is always spoken best  
Breathing deeply from the chest;  
Darling, does your bosom heave?  
*Aimer, aimer, c'est à vivre.*

Now, my dainty little sprite,  
Have I taught your lesson right?  
Then what pay shall I receive?  
*Aimer, aimer, c'est à vivre.*

Will you think me ever bold  
If I linger to be told,  
Whether you yourself believe,  
*Aimer, aimer, c'est à vivre.*

Pretty pupil, when you say  
All the French to me to-day,  
Do you mean it or deceive?  
*Aimer, aimer, c'est à vivre.*

Tell me, may I understand  
When I press your little hand,  
That our hearts together cleave?  
*Aimer, aimer, c'est à vivre.*

Have you, in your tresses room  
For some orange buds to bloom?  
May I such a garland weave?  
*Aimer, aimer, c'est à vivre.*



Or, if I presume too much,  
Teaching French by sense of touch.  
Grant me pardon and reprieve!  
*Aimer, aimer, c'est à vivre.*

Sweetheart, no! you cannot go!  
Let me sit and hold you so.  
Adam did the same to Eve!  
*Aimer, aimer, c'est à vivre.*

[Marked "Ex. D, 54."]

[Upbraiding laughter.]

Judge Neilson—That is quite sufficient, gentlemen—quite sufficient.

Mr. Morris—I guess we better accept that as the original.

Mr. Evarts—Yes, Sir.

Mr. Fullerton—For fear the original is not as good as that, Sir, we will accept that as the original.

#### MR. TILTON'S FREE-LOVE DISCUSSIONS.

Q. Look at this article, Mr. Tilton, the article which contains the parts pencil marked there, and say if it was written by you and published in your newspaper? [Handing witness a copy of *The Golden Age*.] A. Yes, Sir. I beg your pardon, Mr. Evarts. Did you call my attention to any special article?

Q. I asked about the article that has some pencil marks drawn against portions of it? A. Yes, Sir, I wrote that. My name is signed to it.

Mr. Beach—What is it?

Mr. Shearman—It is an article entitled "Mr. Tilton's Rejoinder to Mr. Greeley."

Mr. Morris—What is the date of it?

Mr. Shearman—Published in *The Golden Age* of September 9th, 1871. This is a long article constituting eight paragraphs. As only one of them is material to this point—

Mr. Evarts—The others relate to other topics.

Mr. Shearman—Yes, Sir, they relate to other topics.

Mr. Fullerton—Do you read the article to which it is a reply?

Mr. Shearman—It is not published in this paper.

The Witness—Yes, Sir, it is published there.

Mr. Shearman—Oh, is it?

Mr. Evarts—The rejoinder is published here.

Mr. Fullerton—If we have the sermon, let us have the text.

Mr. Beach—Then we shall have to read the whole of that article.

Mr. Evarts—Well, we will read our part.

Mr. Shearman—I read the third paragraph of Mr. Tilton's rejoinder.

Mr. Morris—Just read Mr. Greeley's letter first.

Mr. Shearman—No, it is not necessary.

The Witness—Won't you read the whole article?

Mr. Beach—I think it is the rule, Sir, that where an answering letter is read, the letter to which it was a reply should be read also.

Judge Neilson—I think that is the rule. Perhaps if counsel will look at it they can judge whether it is material.

Mr. Evarts—Your Honor, we understand exactly what the rule is. All that can be claimed by our learned friends is that it

gives them a right to read any part of the paper to which it is a reply, if they see fit. They cannot make us read it.

Mr. Beach—I differ with my learned friend in regard to the rule.

Mr. Evarts—We had the opposite view in the early part of this trial.

Mr. Beach—Never, Sir, in this trial.

Mr. Evarts—I think so.

Mr. Beach—No, Sir. You are mistaken.

Judge Neilson—I have had occasion to say that where one party puts a paper in they were at liberty to read a part of it.

Mr. Beach—No doubt, Sir.

Judge Neilson—But it was deemed all put in by them, and the other side could read any portion of it they thought proper.

Mr. Fullerton—That does not present this case.

Judge Neilson—No, Sir.

Mr. Evarts—How does it fail to present this case? Supposing it is all in, are we obliged to read it all? Is not that precisely the question, and in accordance with every ruling, that a party reads what he thinks is important to himself, and the other side have a right to read what they think proper?

Mr. Fullerton—Then his answer is incomprehensible without we have the article to which it is a reply.

Mr. Evarts—That is a misfortune.

Mr. Fullerton—I want to mend your misfortunes as well as I can by proposing that the whole article be read in the first instance, and then see whether we think the reply is appropriate.

Mr. Evarts—I do not understand that we are obliged to read the whole article to get at the point which is important to us.

Judge Neilson—I think the whole must be deemed put in by you.

Mr. Evarts—That may be.

Judge Neilson—And you read such part as you now think proper, and they can afterwards call attention to other parts. I think that will answer. [To Mr. Fullerton.] It may burden you with subsequent reading perhaps.

Mr. Fullerton—It won't be any burden for me to read anything that Mr. Tilton has written, Sir. [Laughter.]

Mr. Evarts—This discussion between these two gentlemen—Mr. Greeley and Mr. Tilton—which was somewhat elaborate, represents other subjects, as I understand—I have never seen the letter—other subjects than this, and we have found a paragraph of Mr. Greeley's that seems to relate to this topic. If our learned friends prefer—

The Witness—The whole subject is one.

Mr. Beach—But this is offered as an admission or statement made by Mr. Tilton. Mr. Tilton says that "if a person, in making an admission against his own interest, refers to a written paper without which the admission is not complete, the contents of the paper ought to be shown before the statement can be used as evidence against the party."

Mr. Evarts—Shown to the witness?

Mr. Beach—Shown to the witness? No, Sir; shown to the Court and Jury, who are to understand the admission and construe it.

Mr. Evarts—Well, that is the rule of evidence that your Honor has passed upon, that it gives the right to the other side

to use it. There is not any rule by which we are obliged to read everything that they have a right to. It certainly has not been applied in this case.

Judge Neilson—Well, we will apply that now, leaving the other side to read, as yours, any portion they may think proper hereafter.

Mr. Shearman—I read now an extract from Mr. Greeley's letter, including the whole of one separate paragraph. The paragraphs are numbered 1, 2, 3.

The Witness—Mr. Evarts, will you do me a personal favor, Sir? Will you do me a personal favor? Read this article yourself.

[Mr. Shearman laughed scornfully.]

Mr. Evarts—It would be a contempt of Court, I am afraid.

Judge Neilson—Which part do you read; which section; which number do you read now?

Mr. Shearman—From the paper of September 9th, 1871.

Judge Neilson—The number of the paragraph you read?

Mr. Shearman—The first paragraph of Mr. Greeley's letter? [Reading:]

I. You ask me what I mean by "Free Love." Let me illustrate:

Here are a husband and wife, each fifty years old, who have lived in wedlock a quarter of a century, and have had six or eight children, of whom half survive. The pains and cares of maternity have nearly worn out the wife, while the husband is still in the prime of manly vigor and strength. He has filled a wider sphere and enjoyed better opportunities for mental culture than she has, and feels himself her intellectual superior. Among his acquaintances is a younger, fairer, fresher woman, not so richly dowered with worldly wealth, who admires and is admired by him—who, in fact, is willing, if invited, to be his "affinity," and he is more than willing that she shall. If they "take up" with each other, their arrangement, or whatever you please to call it, is just what I execrate as "Free Love." You know that such alliances exist. I feel that they are abhorred of God and a chief cause of human degradation, family disruption and general wretchedness. In short, I hold the man who has sworn to love and cherish one woman till death, *not free* to love another while that woman lives and strives to fulfill toward him the duties of a loving wife. Hence, I intensely hate "Free Love;" and I hate all inculcation that a marriage may rightfully be dissolved, except for flagrant, deliberate adultery, while husband and wife both live.

I now read the third paragraph of Mr. Tilton's reply, which is as follows, in this letter in which this subject is referred to:

III. A just inference from your letter is that I advocate Free Love. On the contrary, I stiffly oppose it. The latest bulletin of Mr. Stephen Pearl Andrews castigates me because I hold that the heart's ideal is monogamic marriage—the supreme love of one man for one woman through life, and (I hope) beyond death. But this is only my own view—I do not judge for others. Furthermore, I hold that love, and love only, constitutes marriage; that marriage makes the bond, not the bond marriage: and that as the contract is to "love and honor," so when the love and honor end, the contract dissolves, and the marriage ceases. I cheerfully relieve Mr. Henry B. Blackwell and other martinets in Boston by frankly acknowledging that I differ in these views from most other woman suffragists. But I am willing to take all the obloquy which this difference invokes on the few who are right from the many who are wrong. I would no more permit the law of the land to enchain me to a woman whom I did not love, or who did not love me, than I would permit the same law to handcuff

me as a slave to a master on a plantation. There are higher laws than civil statutes, and I am a rebel against the State's too impertinent interference between man and wife. Love should be like religion—free from mandate by the civil law. Now, you may strike me for saying this, but the next generation will gild this sentiment with fine gold. As Kossuth said, "I can wait."

[Paper "Marked D 54."]

Judge Neilson—There is something further.

Mr. Beach—It is, nevertheless, an answer to the paragraph read by Mr. Greeley.

Judge Neilson—It should be read now, I suppose.

Mr. Fullerton—It is our right to read it now, if they do not, I believe.

Mr. Shearman—We will read it—the 4th and 5th:

IV. You say, "I hate all inculcation that a marriage may be rightfully dissolved except for flagrant, deliberate adultery, while husband and wife both live." I am ashamed of such a sentiment from your pen. Thousands of good women, like Mrs. McFarland, have obtained divorces from drunken and beastly husbands, not on account of adultery, but of sottishness or cruelty. By what right, divine or human, shall you remand these emancipated women to the loathsome embraces of men from whom they have fled in fear of their lives? Thousands of women, appealing to merciful and humane courts, have obtained divorces because husbands have deserted them, or mangled them, or starved them, or otherwise wrongly treated them. Why will you cruelly affront all womankind, by saying to each one of these suffering women, "Your divorce is stripped of all moral sanction, and I point at you the finger of obloquy, because you have asked the law to deliver you out of the jaws of death, and out of the gates of hell."

V. You have instanced a married pair who, after a quarter of a century of wedlock, exhibit the husband in his prime, the wife in her decay. "He," you say, "has filled a wide sphere and enjoyed better opportunities for mental culture than she has, and feels himself her intellectual superior." What an innocent confession you here make of your own damning theory of marriage! Doom a woman to be man's inferior from the very beginning of her married life, and what can you expect her to be at the end of it? Why does a woman, after twenty years of wedlock, show more physical and mental dilapidation than a man? It is because, during these years, you and your fellow thinkers sentence her to be man's subordinate, not his equal—his servant, not his mate. Why should "the pains and cares of maternity wear her out," except that you enacted a common law of marriage which either tyrannously forces or tacitly expects a woman to bear more children than she wants? Why should she be intellectually stupid and empty, except that all her life long, you and THE TRIBUNE have shut her out from her husband's opportunities? Why should her husband have "a wider sphere" than hers, except that you and he have conspired to crowd her into a narrower one? Why should he enjoy better opportunities for mental culture than she, except that you have written and published your threats that even if your own daughters should attempt to fit themselves for something higher than household employment, or, in other words, should try to rise to the level of their father's genius, you would step down like Jacob sorrowfully into the grave? I frankly assert, because I solemnly believe, that the young men and women who marry to-day, and who derive their notions of the marriage relation from such teachers as you, will inevitably grow apart, until, at the end of a "quarter of a century of wedlock," they will find themselves in the very antithesis which you have described. Beware lest they curse your memory for bringing them to it!



## PERSONALITY IN JOURNALISM DISCUSSED.

Mr. Evarts—[Handing paper to witness.] Look at that issue.

The Witness—Will you read it?

Mr. Evarts—No; nothing exhibitory is admitted in a court of justice.

The Witness [after a pause]—Did you ask me a question, Mr. Evarts?

Mr. Evarts—I asked you to look at that and at the issue of the paper, and see if that appeared in the paper when you were its editor? A. Yes, Sir; it is an extract from *The Troy Times*. I didn't write it.

Mr. Evarts—No; it don't purport to be written by you.

The Witness—I don't think I ever saw it until this moment.

Mr. Evarts—Still it is in your newspaper. [To the Court.] I propose, if your Honor please, to read this article which I showed my learned friends.

The Witness—It is a little extract made in the news column from a *Troy* paper.

Mr. Evarts—Well, we will see what it is.

Mr. Beach—I understand the counsel to propose to read an extract from *The Troy Times*, which was published in *The Golden Age* during Mr. Tilton's proprietorship of that paper. Mr. Tilton says he does not know that he ever saw it until it is shown to him now on the stand.

Judge Neilson—It cannot be read, therefore.

Mr. Morris—He says he thinks he did.

Mr. Beach—We object to it.

Judge Neilson—It cannot be read.

Mr. Evarts—We offer to read this paper, *The Golden Age*, of which Mr. Tilton was sole editor and proprietor if I understand the evidence.

The Witness—The sole editor is always the man who least reads his own paper.

Mr. Evarts—Well, some of the subscribers, perhaps, don't read it any more. [Laughter.] I don't know how that can be; but the proposition is, if your Honor please, that by his publication of it in this paper Mr. Tilton ostensibly holds himself out as the presenter of these propositions to his people—his public. Now, by itself it would amount to perhaps very little, but having shown by the articles already written, and in some degree, perhaps a less degree, by the oral evidence of this witness, his relations to the opinions of Mrs. Woodhull, we think we have a right to present to the Court and the jury this publication of those opinions without dissent or reproach as the position of his paper on this subject thereby shown.

Judge Neilson—I think you cannot read it unless it appears it was published with his knowledge. My friend, the late District Attorney, suggested that question the other day. He indicted the editor of a local paper for an article published in it, and the indictment failed because the article appeared in the paper without the knowledge of the editor. I always thought that principle was correct as applied to his case. There are very many things in a paper that an editor may not see, that may be put in by a subordinate, which he may not think of sufficient importance afterwards to correct.

Mr. Evarts—I agree. It is not on the ground of a personal approval of a particular difficulty.

Mr. Fullerton—Especially if the editor is absent three months in a year lecturing.

Mr. Evarts—But if a public editor presents an article of this kind in consonance with the direct editorial views of his own putting forth in the same paper, we consider it as an element of the paper's position on that question, to wit, the paper of which he is the responsible and continuing editor. I will ask him about that.

The Witness—"The editor holds himself in no wise responsible for the views of the correspondents," printed over the top of the paper.

Mr. Evarts—This is not the views of the correspondents, and so far as that goes perhaps it is an advertisement, but you hold yourself responsible for all the rest. However, I will ask you now whether you saw that article and approved of that extract? A. I don't think that I ever saw it until this moment.

Q. And approved of its insertion in your paper? A. I neither approved nor disapproved of it. It is the habit of *The Golden Age*, and of any other liberal, fair-minded newspaper, to print the news, and here is an extract.

Q. From a speech of Mrs. Woodhull? A. From a speech of Mrs. Woodhull, printed without comment, exactly as in the same column an extract from the speech of Mr. Evarts might be printed without comment. [Laughter.]

Judge Neilson—He means the Boston gentleman. However, it had better be omitted. It cannot be read.

Mr. Evarts—It is rather an empty compliment, for nothing of the kind has ever been done for me.

Mr. Beach—It proves you cannot save yourself from distinction, however much you may try.

Mr. Evarts—I have not assumed that form, so far, in *The Golden Age*, I believe. [To the Court.] Your Honor will be so good as to note our exception.

Judge Neilson—Yes, Sir.

Mr. Evarts—[Handing paper to witness.] Here is an issue of Sept. 16th, 1871—an article on marrying and unmarried. That is your newspaper? A. That is my newspaper, Sir.

Q. And that is not an extract from any other paper? A. No, Sir.

Mr. Evarts—I offer to read this article.

Mr. Fullerton—That does not entitle the gentleman to read it.

Mr. Evarts—Well, I don't know that—extracts from other papers, anything that appears in quotation marks, is the question disposed of heretofore. Now, I propose to hold an editor responsible in the sphere of public opinion and morality for articles that are published in his newspaper, whether he is personally the writer of them or not, if they appear as the issue of his paper and not credited to any other source.

Judge Neilson—Original matter?

Mr. Evarts—Original matter.

Mr. Fullerton—That is a different question. Does this appear to be original matter? He has not yet shown that.

Judge Neilson—Inspect the paper and see.

Mr. Fullerton—I don't want to inspect the paper and see.

The gentleman has not made his proof and laid the foundation for the production of it.

Mr. Evarts—My proposition is that an editor and publisher of a public newspaper is responsible to public opinion and public morals for the original articles which are put forth in his newspaper, whether he personally writes them or not. The very essence of the independence of journalism as now claimed (and it is not for me to say it is not justly claimed either) is that there must be an impersonality in regard to what a newspaper itself proposes and sets forth as its, the newspaper's, utterances to the public. Now, the other question was of an extract from another paper, and it was a very different matter.

Mr. Beach—They defended it on the same principle.

Mr. Fullerton—The proposition is this, that Mr. Tilton shall be judged by everything that appears in *The Golden Age*, except that which is an extract from another paper.

Mr. Beach—You are right.

Mr. Fullerton—I am right. That is the proposition of the other side, and it is an extraordinary proposition. How can we hold Mr. Tilton responsible for what appears in that paper without his authority and without his knowledge or sanction in any way? Surely that cannot be done. Your Honor will perceive that correspondents claim the right to be heard in the public press, and they are given an opportunity to be heard, not because their sentiments are in harmony with the sentiments of the editor or proprietor of the paper, but they may be admitted for the purpose of combating them. That is often the case. Now, there is not the slightest proof in this case, so far as this article which they now propose to read is concerned, that it was ever brought under the observation of Mr. Tilton, or that he ever knew that one line of it had ever been published in *The Golden Age*. Now, until they bring the knowledge of it home to him, to show that he approbated it, he is not to be responsible for it. It certainly would be extraordinary if an editor was responsible for an article extracted from another paper and published in his own paper, when he put it there for the purpose only of combating it and showing its falsity, and showing its immorality. An editor is sometimes held legally responsible for everything that appears in his paper, but that question arises in a different way and under different circumstances, and in a different case from the one now on trial. They seek to hold him morally responsible for what is in his paper. They seem to say those must be his sentiments because they are published in his paper; but that is a *non sequiter*. They are not his because they appear there at all.

Mr. Beach—May I add a single word, if your Honor please? I think, with reference to the principle and the object with which this character of evidence is offered, we can very readily discern the principle by which its admission should be governed. These articles are offered as declarations made on the part of Mr. Tilton, expressive of his sentiments in regard to topics which are considered on the other side odious, for the purpose of identifying him with what are called the "advanced or libertine opinions on the subject of marriage," and that relation. It is now offered to prove an article which was published in the paper, of which the plaintiff was proprietor. It is sought to prove that that article is an expression of the opinions, upon a

given subject, of Mr. Tilton. There is not proof that he knew of the publication of the article. There is not the slightest proof that he approves of the sentiments which it expresses. But now, Sir, looking at the purpose and effect of the proof, upon what principle is it that Mr. Tilton is to be judged, by an article which appeared in a paper with which he was connected, when it does not appear, even presumptively, that he was acquainted with the contents of the article; and when it may, on perchance does, express opinions which would be entirely repulsive to his judgment and heart? Look at it in another light, and by analogy. A principal is sometimes held to be responsible for the declarations of his agents where these declarations are authoritative and made in the course of the business which has been confided to the action of that agent. That is not the relation as between the proprietor of a newspaper and the paper itself. These are not declarations made by an agent empowered to express the sentiments of Mr. Tilton upon the marriage relation. The relation of principal and agent is not established, nor is the extent of the authority established which would confer upon a writer for that paper, although in the employment of Mr. Tilton, to express or reveal the opinions which Mr. Tilton may entertain upon this subject, and in whatever light you may regard it, Sir, as it now stands unaided by proof of knowledge or approbation on the part of Mr. Tilton, it is simple declaration of a third party made through an organ which was generally controlled by the plaintiff. Now, I submit to your Honor with great confidence, but with respect, that articles of that character, expressions of that character not traced to Mr. Tilton or to his approval, should not be received for the purpose of characterizing his sentiments upon any subject. But your Honor has decided that question. I submit it is precisely in principle the same proposition which was submitted when the extract from *The Troy Times* was offered to be read. That was published in Mr. Tilton's paper. It was his paper, in some degree his agent or his oracle, but yet he is not responsible—when his private and personal opinions are sought to be attached to him he is not responsible for all the expressions which may appear in the paper. If this is admitted, why was not the extract from *The Troy Times* admissible? If without any proof, knowledge or approval, he is to be judged by this article, why not by the article which appears in his paper, whether it be an extract from another or not. This is not his composition, this is not his declaration of sentiments. It is the expression of a third party, precisely the same as the article from *The Troy Times* expresses the opinions and sentiments of another, and it seems to me the principle applicable to the two cases is perfectly identical, and it must be recognized as a sound principle.

Mr. Evarts—Now, if your Honor will observe the attitude which Mr. Tilton and his newspaper occupy to the subject under discussion, and in reference to which the testimony is pertinent, if pertinent at all. Having shown that Mr. Tilton is the editor and proprietor of this newspaper, whatever is the character of his newspaper as put forth in its issues to the public, upon which the public pass in denouncing his publications and his position as a publisher of opinions in this community, calls upon him, not on the question of his individual responsibility



as author of this or that paragraph, but upon his editorial, his proprietorial responsibility for diffusing these sentiments through the community. He is held civilly responsible for trespasses upon individual rights in an action of libel, no matter whether he wrote it himself or not. The law has settled that question, that he who publishes is responsible for the publication; and in the case of criminal responsibility, the law is no doubt as your Honor has suggested. But it is *prima facie* enough to hold criminally an editor, that the complained of article for which he is criminally prosecuted is in his paper; and it depends upon him to prove, not only that he did not write it—that would have been no excuse for him—but that it was not inserted with his knowledge and under general authority which he had given to a subordinate in relation to such matters; but beyond that, that when its existence was brought to his notice, he did all that he could to extirpate it from the paper and exclude it from circulation, as in the case to which your Honor refers, in the matter of the prosecution of the editor of *The Argus*; for I assume that is the case to which your Honor was alluding. Now, as bearing upon the fortunes and prosperity of this *Golden Age*, the credit and esteem of Mr. Tilton with the community. No discriminations, as matter of fact, are made by the readers of a journal of those who approve or those who denounce such sentiments, whether it is known that they are from the pen of Mr. Tilton. They are from his office, from his issue, from his presentation to public influence, and for public results of those doctrines in his newspaper; and it might be, if it had been important, that a ground might have been found to press upon your Honor that when he puts forth speeches of this or that public orator, whether Mrs. Woodhull or any one else, that his paper becomes an organ and a means of dissemination of those opinions, and if they are odious, if they are offensive, if they are destructive, and the paper is systematically made the means of their dissemination, why, on the sphere of criminality and morality, which is the sphere which we are now discussing, the editor is responsible as being his issue of those sentiments, whether he wrote them with his own hand or not.

Judge Neilson—In the case of an action of libel, the responsibility for the publication of the article, although it may be taken from another paper, rests upon the principle, that the third person injured—the plaintiff in the case—is to be protected, for his individual protection. The case of an indictment where that is referred to, the Court had reference to the public interest, the public security. The other question, to wit, whether articles published tended to make *The Golden Age* a good and proper paper, or leave it subject to criticism, and so fall into disrepute and generally inculcate bad manners, is not a moral—is not the question before us. The question before us has to do with the individual sentiments of this witness.

Mr. Evarts—Yes, Sir; we agree to that.

Judge Neilson—If the case before us involved the question whether he was a good editor, whether he kept his contracts as published, or not, that again would be different; but this goes to the state of morals of the witness, to his individual

sentiments, and I, therefore, think the inquiry should be confined to articles written by himself, or published with his knowledge and sanction; and as the proof now stands I think this article cannot be read.

Mr. Evarts—Your Honor will be so good as to note our exception.

Judge Neilson—Yes, Sir.

#### MR. TILTON SHIELDS HIS CONTRIBUTORS.

Mr. Evarts—[Handing paper to witness.] Look at that article and say if you wrote it?

The Witness—Mr. Evarts, will you step here a moment. [To the Court.] May I speak confidentially to the counsel a moment, your Honor.

Judge Neilson—Yes, Sir, if he permits it.

[Mr. Evarts and the witness here consulted together for a short time.]

Q. Now, I ask you if you wrote that, Mr. Tilton? A. No, Sir.

Q. Was it published with your knowledge and approval? A. No, Sir.

Q. Did you in any way exhibit, either in that issue or in any subsequent issue, any disapproval of that article? A. I didn't observe either this article or the other, until two or three weeks after my attention was publicly called to it. Then I ascertained to my great astonishment—

Q. You mean the one that was excluded? A. Yes, Sir; they were both written by the same pen.

Q. That purported to be a speech of Mrs. Woodhull? A. No, Sir. Here are two articles printed from a correspondent.

Mr. Evarts—No, I have not asked you that.

The Witness—I thought this was another. There are two in succession.

Mr. Beach—You were asked if you expressed any disapproval? A. I did; I expressed a good deal of dissent and regretted their publication.

Mr. Evarts—Don't talk about their publication, who was the writer of that one? A. I find on looking at this one that it is written by a member of an orthodox Congregational church and a contributor to *The Christian Union*, and a member of Mr. Beecher's coterie of writers.

Mr. Evarts—Now, we may as well have the name—otherwise we will all be aspersed. Who was the writer?

The Witness—[To the Court.] I ask your Honor's permission to shelter the name of the writer, it being a lady.

Mr. Evarts—I don't know who the lady is, nor do I care who she is, but it seems to be some disparagement—

Judge Neilson—I hardly think so. I think the witness should omit it.

Mr. Evarts—The whole circle seems aspersed.

The Witness—I called Mr. Evarts to me and gave him that hint in private.

Mr. Evarts—I told you I had not asked you who wrote it.

The Witness—But I told you it was written by one of Mr. Beecher's personal friends.

Mr. Evarts—You gave it to me in confidence, and I didn't divulge it.

The Witness—But you mean to put a question to me to make me divulge it.

Judge Neilson—You can answer whether you wrote it.

Mr. Beach—I think the witness and Mr. Evarts should continue this discussion during the recess. It is now one o'clock. [Laughter.]

Mr. Evarts—We should lose our audience, which is the only motive for its continuance. [To the witness.] Now, you have not answered, I think, my question whether you had, either in this issue, or in any subsequent one, said anything in your paper in discountenance of this article or approval of it? A. No, Sir: I spoke personally about it.

Q. You mean to the writer? A. Yes, Sir.

Q. Not to the public? A. To some of the writer's friends.

Mr. Evarts—Now, I apprehend, if your Honor please, that I am entitled to read the article.

Judge Neilson—The same ruling as to the other.

Mr. Morris—He says he disavowed it.

Mr. Evarts—He says he did not in his newspaper disavow it, but spoke to the writer about it. We so understand him. He spoke to the writer, he says.

Judge Neilson—He didn't disavow it in his paper. He did otherwise disavow it. I think I shall rule it out.

Mr. Evarts—Your Honor will note our exception. The article has so bad a name, I think it ought to be read on its own account to show that it is not so bad as it is represented.

Judge Neilson—We will now take our recess. [To the jurors.] Gentlemen, please be in your seats punctually at 2 o'clock.

## THE WOODHULL BIOGRAPHY AGAIN RULED OUT.

After recess the cross-examination was continued as follows:

Mr. Evarts—[Paper handed to witness.] Look at this and see if that is an issue of your press? A. All except "B. F. Tracy, January 22, 1874."

Q. Well, that happens to be the name of the owner of it, that is not printed, is it? A. No, Sir.

Q. That hardly could be an issue of any man's press, could it? A. Certainly not of mine.

Q. Well, I ask you if that was the issue of your press? A. I say all but the written name on it.

Q. This is the Life of Mrs. Woodhull, about the manner of composition of which you testified in your direct examination. A. Not her life, Sir, but a narrative of it.

Q. Well, a biographical sketch of it? A. Yes, Sir.

Q. It is the paper, the production, of which you spoke as to the manner of its composition? A. Yes, Sir.

Mr. Evarts—I offer this in evidence now. The witness has given us statements concerning its composition, as your Honor will remember, in his direct examination introduced by my learned friend. I suppose, of course, I am entitled to put it in evidence.

Mr. Beach—If your Honor please, I do not deem this publication admissible. It has been once ruled out by your Honor. Perhaps the circumstances are somewhat changed under which it is now offered. But it appears that that sketch of Mrs.

Woodhull was corrected after preparation by her husband by Mr. Tilton, and certain parts of it which were not his authorship, as they were prepared by the husband of Mrs. Woodhull, were omitted in the sketch which was written and prepared by Mr. Tilton, with which he was not in harmony, and that it was, so far as he had any connection with it, prepared and issued in pursuance of an arrangement between himself and Mr. Beecher and Mr. Moulton for the purpose of suppressing the scandal which is now under examination. It is offered for the purpose of concluding Mr. Tilton, or identifying him, at least, with the opinions of that lady, which she expressed. And when it appears as plainly as it does under the evidence as it now stands, without contradiction, that they were not his own opinions in regard to that person; when it is clear that it was prepared for a common purpose between the plaintiff and Mr. Beecher, it seems to me that it is immaterial. The object of its production, as I said, was to identify Mr. Tilton with certain opinions and sentiments, and to prove his approbation in regard to the public history of this lady and her opinions. When it is perfectly apparent that it is not a real expression of his views; that it was a device or stratagem arranged upon between these parties for a specific purpose, acknowledged and known to be a mere device, and not a candid and sincere expression of an opinion on the part of the writer, it seems to me that the introduction of such a paper is wide from the purpose for which it is offered, and that it is in itself immaterial. I therefore submit to your Honor that the general opinions which may be given by Mr. Tilton in regard to the character of a public personage, even if they were the expression of his own real sentiments in regard to that person or to the doctrines which she might advance, are immaterial to any issue in this case. But your Honor will further perceive, so far as I have observed the nature of the evidence now offered, that it is not by any means in itself an adoption of the opinions which are imputed to that lady. It is a sketch or history of a public person in connection with the particular subject out of which, or in connection with which, she has grown notorious. Now, how does that become material, Sir, in this action? It is only upon the argument and theory that such a sketch or history of a public personage is an approval of the doctrines or opinions which that person may be supposed to maintain. I submit to your Honor that a history either of a nation or an individual, is not, in its whole, matter of evidence as against itself, either in regard to the facts or the events which it may detail, and that the approbation of a historic personage by a historian is by no means an adoption of all the opinions or an approval of all the acts which may be attached to that person. The effort is, by the production of this sketch of the life of Mrs. Woodhull, to connect and identify Mrs. Tilton with all the opprobrium, whether just or unjust, which the public may have attached to her supposed notions or doctrines. Now, your Honor must see in the production which is offered, some direct approval or adoption of those supposed sentiments, that a historian cannot be charged, as I have said to your Honor, with the character of the nation or individual which may be the subject of his writ-



ing. And in that view, if your Honor please, you have heretofore excluded this article as a whole, and have permitted only, I believe, a certain extract or certain extracts to be read from it for the purpose of applying or characterizing certain other testimony.

Judge Neilson—It was the other article.

Mr. Beach—It was from the other article, then, I understand. Now, I submit to your Honor, that before this paper should be received as a whole, it should be submitted to your Honor in some form, either by reading or by personal examination, so that you may understand the nature of its contents and see how far it may be material and appropriate to the issue we are trying. Because, your Honor will perceive, the examination and cross-examination thus far have raised the necessity, and this will but increase the necessity of examining in regard to the real sentiments which Mr. Tilton may, at the time, have entertained in regard to this person, or in regard to the opinions and tenets which were publicly imputed to her at the time. It seems to me we are wandering far off into ranges of collateral inquiry, which are unnecessarily occupying the time of the Court, and will not tend to any elucidation of the particular interests which are to be passed upon by your Honor and the Jury. We, therefore, object to this article as it is offered, in bulk.

Mr. Evarts—This seems to be the simplest matter in the world, if your Honor please. Evidence has been introduced in the direct examination of this witness concerning his composition of this book; how, at one stage of its progress, it had dissatisfied the subject of the sketch; and how he subsequently completed it that night, occupying the greater part of the night, and read it to the family of that household the next morning, and it was pronounced a perfect success; something of that kind; some very high encomium passed upon it by that lady and her family. Now, when we undertake to show the thing that he did, they say we cannot show the thing that he did; the manner of its being done, is the only thing that is suitable in evidence. Now, that seems a monstrous proposition. They can introduce in direct evidence from this witness, the author of this book, of the way he wrote that book, and that is pertinent evidence; and then, when we undertake to prove the thing that he did, that is not pertinent evidence. Now, in regard to some general views, they won't, it seems to me, bear examination any better than this particular objection. My learned friend speaks of the state of the evidence as uncontradicted in regard to the degree of harmony that existed between the opinions of this witness and author and this lady, the subject of the memoir. Well, it does not follow that because testimony is not contradicted that it is accepted, and in the same sense in which my learned friends may wish it to be by the triers of questions of fact. But under the evidence it certainly is a question for this Jury to determine if it be a subject to be discussed as an element of fact in this case, what the degree of sympathy, of unity, of confederacy between this lady and this witness and author, in respect to the dissemination of these doctrines and the glorification of the chief champion of

them in this country creates. I know no better or safer way for the witness than to take his own eulogy upon the woman, coupled with his own explanation of how he happened to give the eulogy. There is no injustice done in that. In regard to a supposed concurrence on Mr. Beecher's part in this production—well, that seems rather fanciful, because all that has been said about Mr. Beecher in the connection was that he approved of stopping the dissemination of these slanders by kindness and influence with this lady. He never has been heard to approve of this *Life of Victoria Woodhull*, or its sentiments, or its applause. But if he had it would not make it any less important that, instead of the vague, uncertain and nebulous views about the lady and about the author in connection with the work, the work itself should be the subject to which attention is to be directed—whether Mr. Beecher on the one hand or Mr. Tilton on the other is to be held responsible for it. Now, the connection of this subject with the issues in this cause is two-fold: First, in its primary relation as the evidence of sentiments, of associations, of commitment, of involvement, in these doctrines and with their representative as bearing upon his position then before maintained in reference to the more accepted views of religion and of morals, and the more acceptable organs of public influence through which Mr. Tilton had been acting. It bears also strongly, as your Honor will well remember, upon the question of the swift destruction upon the interests of *The Golden Age* and its proprietor, of his position and repute before the public which followed from this publication—this very publication, and to meet any ideas that are to be introduced that any harm has come to his prosperity or his fortunes in consequence of the complaint he now makes of the injury which he has suffered from this defendant, and which from the principal issues and the issues on which the whole case depends. Now, if your Honor please, on the simplest proposition, if evidence concerning the thing has been given, the manner of its composition, why then the thing itself may be shown, and then on the grounds I have mentioned it seems to me clearly admissible.

Mr. Fullerton—I think it would be well, if the Court please, to understand the exact attitude of the persons interested in suppressing this scandal in 1871, when this so-called biography was published. Your Honor will recollect that, prior to its publication, this card of Victoria Woodhull appeared in one or more of the New York papers, in which she foreshadowed an intent upon her part to publish this scandal to the world. As a matter of course, this was a cause of great alarm and apprehension, an alarm which reached Mr. Beecher as well as Mr. Tilton. If it lay in the range of human effort it was to be suppressed. They came to the conclusion to leave nothing undone which could be done for the purpose of silencing this threatened exposure. They met together; they consulted as to what should be the course they should adopt to accomplish a common end and to effectuate a common purpose. They supposed that the scandal was effectually suppressed at that time, but here a new danger had arisen, a lion in the way, or, considering the sex of the person

who threatened the exposure, I may term it a lioness in the way, not the less dangerous. And it was agreed that Mr. Tilton should go forward to extract the teeth of this dangerous animal, and to substitute the kindly purr for the wicked and threatening growl. He went forward to accomplish that end, not only on his own behalf but on behalf of Mr. Henry Ward Beecher, and with his approval. And, Sir, he wrote that biography for a common purpose—to repress this scandal for the benefit of the one as well as for the benefit of the other, and when his labors closed he received his commendation. I suppose that if to accomplish that object, Mr. Tilton had been called upon to write a glowing eulogy upon Judas Iscariot he would have done it, and it would have received the defendant's blessing. And now, Sir, it is with a bad grace that Mr. Beecher, the defendant in this case, turns upon Theodore Tilton and holds him responsible for the sentiments expressed in that biography, holding him up as an immoral man and promulgating immoral and dangerous sentiments in the community, for the purpose of relieving himself from the consequences of the charge now preferred against him. I call your Honor's attention to these circumstances to the end that you may see that as the proof now stands, Mr. Beecher is to be held responsible for this publication as well as Mr. Tilton. If it should reflect, peradventure, upon the one it reflects equally upon the other. Mr. Beecher will be held responsible for it under the evidence in this case as much as Mr. Tilton, and I think that neither, under the circumstances, is to be held responsible for it. When your Honor views the circumstances which gave rise to the writing of that life, the object which these parties had to effect, and that they effected it by the publication of this biography, you will see that it is improper testimony in this cause, and can serve no good purpose if it is read in evidence.

Mr. Evarts—I am at a loss to perceive, if your Honor please, why, because Mr. Beecher will be effected by it, it makes it any the less improper to be offered in evidence.

Mr. Beach—I think, your Honor, that in making these objections the usual order of argument should be pursued.

Mr. Evarts—Why, then, these new suggestions?

Mr. Beach—There are no new suggestions; they are only amplified and enforced.

Mr. Fullerton—I shall not fail to make a suggestion for Mr. Beecher's benefit, if the other side fail to do so.

Mr. Evarts—And, after all, what you say in his favor may not go very far then.

Mr. Fullerton—Well, it may go far enough to reach him and do him good.

Mr. Evarts—And get his thanks.

Mr. Fullerton—Yes, as Tilton did.

Mr. Evarts—Moulton has had so many! Now, if your Honor please, this is really a matter of considerable importance in regard to the effect of the evidence in this cause. Here is a proposition to prove. We now agree when it is in it may be wrested or probably used by my learned friends to the destruction of the defendant. That is not the question now. And ever since the judgment of Solomon as to the mother of the child you can generally tell which has the true

affection for the piece of testimony, the one that wants it in or the one that wants it out.

Judge Neilson—I think I must rule it out, Sir; I can not receive it.

Mr. Fullerton—Solomon's judgment was as to the child, not the mother of it.

Mr. Evarts—Well, the child; this is the child.

Mr. Fullerton—Yes, but it turns out to be an illegitimate one.

Mr. Evarts—Mark this for identification.

[Book marked for identification.]

Judge Neilson—I ask the reporters to remember that any movement on their part or any conversation on their part, however low, is fatal to the hearing of the reporter who happens to be further off, and is very oppressive. They ought to be considerate towards one another.

#### THE CLEVELAND LETTER ADMITTED.

Mr. Evarts—Your Honor will be so good as to note our exception to this ruling. The Cleveland letter, Sir, of which we have now a better record from the files of the *Herald*, is produced. [Book shown to witness.]

Mr. Shearman—Date of September 2d.

The Witness—Well, what of it?

Judge Neilson—See if you recognize that as the Cleveland letter.

Mr. Beach—Whose? Mr. Beecher's?

Mr. Evarts—Yes, Sir; Mr. Beecher's letter. [To the witness.] Look at it at your leisure.

The Witness—Do you wish me to read it?

Judge Neilson—At your leisure. Look through it enough to see whether it is the letter.

Mr. Evarts—[Producing a sheet.] Here is a more manageable form of it. I suppose it is the same thing.

The Witness—Well, I will read it.

Judge Neilson—Perhaps by recalling the mode of statement or argument—

The Witness—Here is a letter dated "Peekskill, August 30, 1866," signed "Henry Ward Beecher," and I presume it is the Cleveland letter.

Judge Neilson—See if you recognize the sentiment or argument.

The Witness—I don't think there was any argument used. [Examining the paper.]

Mr. Evarts—Have you looked at it, Mr. Tilton? A. Sufficiently, Sir; for what?

Q. To answer whether that was the basis of the controversy. A. I have no manner of doubt, Sir, that this is the letter.

Mr. Evarts—I offer it in evidence.

Mr. Beach—We object to it.

Judge Neilson—I think we will receive it, Sir. It is supposed to be the basis of some departure between them.

Mr. Beach—That may be, but it is not at all admissible.

Mr. Morris—Well, that, if your Honor please, will render it necessary to read the speech of Mr. Beecher, in reference to that letter, in the Academy of Music, subsequently. It will let in the whole of that matter, that it will take a week to read.



Mr. Beecher made a speech in the Academy of Music shortly after, retracting that letter, a long speech which I had the pleasure of hearing—about two and a half hours. It will be necessary to show it.

Judge Neilson—No. The proof of the general fact that he made it will be sufficient.

Mr. Morris—No; we will have to read the speech to show that he did.

Judge Neilson—I think this is admissible under the evidence.

Judge Porter [Reading]:

LETTER OF HENRY WARD BEECHER ON NATIONAL RESTORATION.

In their letter of invitation to Mr. Beecher to act as chaplain, the Special Committee of the Soldiers' and Sailors' Convention, to be held at Cleveland on the 17th, say: Your name has been selected by the Executive Committee from sincere admiration of your character and as the only tribute within their power to pay in acknowledgment of your noble devotion to the cause of the Union and your earnest and increasing efforts in behalf of our soldiers and sailors during the recent war.

REV. HENRY WARD BEECHER'S REPLY.

PEEKSKILL, Thursday, Aug. 30th, 1866.

CHAS. G. HALPINE, Brevet Brig.-Gen.; H. W. SLOCUM, Maj.-Gen.; GORDON GRANGER, Maj.-Gen., *Committee*.

GENTLEMEN: I am obliged to you for the invitation which you have made to me to act as Chaplain to the Convention of Sailors and Soldiers about to convene at Cleveland. I cannot attend it, but I heartily wish it and all other conventions, of what party soever, success, whose object is the restoration of all the States late in rebellion to their Federal relations.

Our theory of government has no place for a State except in the Union. It is just taken for granted that the duties and responsibilities of a State in Federal relations tend to its political health, and to that of the whole nation. Even Territories are hastily brought in, often before the prescribed conditions are fulfilled, as if it were dangerous to have a community outside of the great body politic.

Had the loyal Senators and Representatives of Tennessee been admitted at once, on the assembling of Congress, and, in moderate succession, Arkansas, Georgia, Alabama, North Carolina and Virginia, the public mind of the South would have been far more healthy than it is, and those States which lingered on probation to the last would have been under a more salutary influence to good conduct than if a dozen armies watched over them.

Every month that we delay this healthful step complicates the case. The excluded population, enough unsettled before, grows more irritable; the army becomes indispensable to local government, and supersedes it; the Government at Washington is called to interfere in one and another difficulty, and this will be done ineptly, and sometimes with great injustice—for our Government, wisely adapted to its own proper functions, is utterly devoid of those habits, and unequipped with the instruments which fit a centralized government to exercise authority in remote States over local affairs. Every attempt to perform such duties has resulted in mistakes which have excited the nation. But whatever imprudence there may be in the method, the real criticism should be against the requisition of such duties of the General Government.

The Federal Government is unfit to exercise minor police and local government, and will inevitably blunder when it attempts it. To keep a half score of States under Federal authority, but without nationalities and responsibilities; to oblige the central authority to govern half of the territory of the Union by Federal civil officers and by the army, is a policy not only uncongenial to our ideas and principles, but preëminently dangerous to the spirit of our Government. However humane the ends sought and the motives, it is in fact, a course of instruction, preparing our

Government to be despotic, and familiarizing the people to a stretch of authority which can never be other than dangerous to liberty.

I am aware that good men are withheld from advocating the prompt and successive admission of the exiled States by the fear, chiefly, of its effect upon parties and upon freedmen.

It is said, that if admitted to Congress, the Southern Senators and Representatives will coalesce with the Northern Democrats and rule the country. Is this nation, then, to remain dismembered to save the ends of parties? Have we learned no wisdom by the history of the last ten years, in which just this course of sacrificing the nation to the exigencies of parties plunged us into rebellion and war?

Even admit that the power would pass into the hands of a party made up of Southern men, and the hitherto dishonored and misled Democracy of the North, that power could not be used just as they pleased. The war has changed not alone institutions, but ideas. The whole country has advanced. Public sentiment is exalted far beyond what it has been at any former period. A new party would, like a river, be obliged to seek its channels in the already existing slopes and forms of the continent.

We have entered a new era of liberty. The style of thought is free and more noble. The young men of our times are regenerated. The great army has been a school, and hundreds of thousands of men are gone home to preach a true and noble view of human rights. All the industrial interests of society are moving with increased wisdom toward intelligence and liberty. Everywhere—in churches, in literature, in natural sciences, in physical industries, in social questions, as well as in politics—the nation feels that the Winter is over, and a new Spring hangs in the horizon and works through all the elements. In this happily changed and advanced condition of things, no party of the retrograde can maintain itself. Everything marches, and parties must march.

I hear with wonder and shame and scorn the fear of a few that the South once more in adjustment with the Federal Government will rule this nation! The North is rich—never so rich; the South is poor—never before so poor. The population of the North is nearly double that of the South. The industry of the North, in diversity, in forwardness and productiveness, in all the machinery and education required for manufacturing, is half a century in advance of the South; churches in the North crown every hill, and schools swarm in every neighborhood; while the South has but scattered lights, at long distance, like light-houses twinkling along the edge of a continent of darkness. In the presence of such a contrast how mean and craven is the fear that the South will rule the policy of the land! That it will have an influence, that it will contribute in time most important influences or restraints, we are glad to believe; but if it rises at once to the control of the Government it will be because the North, demoralized by prosperity and besotted by groveling interests, refuses to discharge its share of political duty. In such a case the South not only will control the Government, but it ought to do it.

It is feared, with more reason, that the restoration of the South to her full independence will be detrimental to the freedmen. The sooner we dismiss from our minds the idea that the freedmen can be classified and separated from the white population, and nursed and defended by themselves, the better it will be for them and us. The negro is part and parcel of Southern society. He cannot be prosperous while it is unprospered. Its evils will rebound upon him. Its happiness and reinvigoration cannot be kept from his participation. The restoration of the South to amicable relations with the North, the reorganization of its industry, the reinspiration of its enterprise and thrift, will all redound to the freedman's benefit. Nothing is so dangerous to the freedman as an unsettled state of society in the South. On him comes all the spite and anger and caprice and

**Revenge.** He will be made the scapegoat of lawless and heartless men. Unless we turn the Government into a vast military machine there cannot be armies enough to protect the freedman while Southern society remains insurrectionary. If Southern society is calmed, settled and occupied, and soothed, with new hopes and prosperous industries, no armies will be needed. Riots will subside, lawless hangers on will be driven off or better governed, and a way will be gradually opened up to the freedmen, through education and industry, to full citizenship, with all its honors and duties.

Civilization is a growth. None can escape that forty years in the wilderness who travel from the Egypt of ignorance to the promised land of civilization. The freedmen must take their march. I have full faith in the results. If they have the stamina to undergo the hardships which every uncivilized people has undergone in their upward progress, they will in due time take their place among us. That place cannot be bought, nor bequeathed, nor gained by sleight-of-hand. It will come to sobriety, virtue, industry and frugality. As the nation cannot be sound until the South is prosperous, so, on the other extreme, a healthy condition of civil society in the South is indispensable to the welfare of the freedmen.

Refusing to admit loyal Senators and Representatives from the South to Congress will not help the freedmen. It will not secure for them the vote. It will not protect them. It will not secure any amendment of our Constitution, however just and wise. It will only increase the dangers and complicate the difficulties. Whether we regard the whole nation, or any section of it, or class in it, the first demand of our time is, entire reunion!

Once united, we can, by schools, churches, a free press and increasing free speech, attack each evil and secure every good.

Meanwhile the great chasm which rebellion made is not filled up; it grows deeper and stretches wider! Out of it rises dread spectres and threatening sounds. Let that gulf be closed and bury in it slavery, sectional animosity and all strifes and hatreds!

It is fit that the brave men who on sea and land faced death to save the nation should now by their voice and vote consummate what their swords rendered possible.

For the sake of the freedmen, for the sake of the South and its millions of our fellow-countrymen, for our own sake, and for the great cause of freedom and civilization, I urge the immediate reunion of all the parts which rebellion and war have shattered.

I am, truly yours,

HENRY WARD BEECHER.

[Marked "Ex. D, 57."]

#### MORE OF MR. AND MRS. TILTON'S LETTERS TO BE INTRODUCED.

**Mr. Beach**—We are, Sir, in our examination of the letters of Mrs. Tilton and her husband, falling upon one occasionally which we would like to introduce at some stage of the examination.

**Judge Neilson**—You can at the close of the cross-examination.

**Mr. Beach**—Very well.

**Mr. Evarts**—Well, if your Honor please—

**Judge Neilson**—I will reserve that right.

**Mr. Evarts**—Well, your Honor, we both agree that they should be introduced as soon as we find them.

**Judge Neilson**—It will break the continuity of your examination.

**Mr. Evarts**—No, not at all; we would rather have them in because we would have to have a re-direct on them.

**Judge Neilson**—Just as you please.

**Mr. Beach**—We will read them as we find them. We will go over, Sir, more accurately this correspondence in the course of the evening, and in the morning we will state the result, or very soon.

**Judge Neilson**—Well.

**Mr. Evarts**—If your Honor please, the witness has been subpoenaed on our part to produce various papers, among them the letters between himself and his wife, and we have endeavored to make a memorandum of those which at present we wish, and have handed it to the counsel. We are desirous of them as promptly as may be. I only give notice to the counsel that it is at the approaching stage of my examination that I shall want to use them—the letters of Mr. Tilton and of Mrs. Tilton. If at the same time you can give us those that you wish to ask about—

**Mr. Morris**—Well, that we can't do to-night.

**Mr. Evarts**—Until I get the whole of the letters I shall be unable to go on further with any consideration of this present topic. I have got through with the publications.

#### MR. TILTON'S EARLY ACQUAINTANCE WITH MR. BEECHER.

**Q.** Now, Mr. Tilton, I will ask you concerning your personal relations with the defendant, Mr. Beecher. In general we know their origin and progress, by your direct examination. Now, did you become well acquainted with Mr. Beecher, in the years of your knowledge of him, prior to the year 1870? **A.** I thought I knew him thoroughly, but I found I was mistaken.

**Q.** Well, that is a subsequent discovery? **A.** Yes, Sir.

**Q.** Up to that time; you thought you knew him very well, did you not? **A.** Yes, Sir.

**Q.** And your intercourse with him was such as would lead you to suppose that he knew you very well? **A.** Yes, Sir.

**Q.** Now, won't you describe to me the early sentiments that you entertained toward Mr. Beecher, say up to the time when you became an assistant editor—I think you did—of *The Independent*; he became editor and you became an assistant editor, did you not? **A.** Yes, Sir.

**Q.** Now, we will take it up to that time; what time was that—about 1860 or 1861? **A.** When I became editor-in-chief?

**Q.** When you became assistant editor. After his return from Europe you became editor in full. You did not become editor-in-chief until after Mr. Beecher returned from Europe, I understand? **A.** No, Sir.

**Q.** And you became assistant editor— **A.** In 1856.

**Q.** As early as 1856? **A.** Yes, Sir.

**Q.** Well, we will say up to that time. In the first place, your acquaintance with him commenced when you were how old?

**A.** I shall have to guess.

**Judge Neilson**—The question is, about how old?

**Mr. Evarts**—Yes, Sir.

**The Witness**—You objected to my answering that way yesterday. Will you do me the favor to put it in some form, so I can make you a correct answer?

**Q.** At what age—about what age were you when you first



became acquainted with Mr. Beecher? A. I think when I was about 16 or 17 years old, perhaps a little older.

Q. But was that acquaintance cotemporaneous with your taking up your residence in Brooklyn? A. I think it began a little before that.

Q. Now, in what form of association or acquaintance were you at first connected with him? A. I used to go his church at first; I then went to his Sunday school; I then became associated with him in *The Independent*; and in all of those ways I was more or less intimate with him.

Q. But he was a man in maturity of life and strength and repute when you first became acquainted with him, was he not? A. I don't think he had reached his maturity of life; I don't know at what age you fix the maturity of life.

Q. Well, I am not speculating about it as a general thing. I am asking you a plain question. A. I don't know Mr. Beecher's age at that time. I don't know it at the present time.

Q. Well, you know something of it, don't you? A. Something of his age?

Q. Yes, Sir. A. I think he is between—

Q. Some general notion. A. Between sixty and sixty-five, if I understand anything about it. Still, I won't undertake to speak another man's age.

Q. Well, now we will take the best answer you can give us. [To the stenographer.] Now, will you read the question?

THE TRIBUNE stenographer read the question as follows:

"Q. But he was a man in maturity of life and strength and repute when you first became acquainted with him, was he not?" A. I don't think he had come either to the maturity of his strength or repute at that time.

Q. Do you use maturity, then, in the sense of zenith or culmination? A. I use it in the sense in which I suppose you wish me to answer.

Q. Was he a man of mature years and settled position in his profession and before the public? A. Well, Sir, when I knew him I always regarded him as a big boy rather than a man at all. He was a man of large fame and had a great church and was in the exercise of very manly and illustrious powers.

Q. Well, in what sense do you wish to be understood that he seemed to you like a big boy? A. Because his manner was large, and hearty, and gay, and companionable, and winning.

Q. Guileless? A. No, Sir.

Q. How? A. No, Sir.

Q. Don't that come within the description of "like a boy"? A. Well, Sir, the craftiest people I know of are boys; news-boys, for instance.

Q. Well, I don't know them.

Mr. Beach—They know the gentleman very well.

Q. Well, do you not use this phrase "like a boy" in the sense of frankness and generosity of character and demeanor? You have used the phrase; now I suppose that that is the reasonable sense of it? A. When I say that Mr. Beecher in his earlier years was like a big boy, I mean to say there was a certain bouncing character to his life and manner. He was very companionable hale-fellow-well-met, fond of a joke and a

frolic, fond of the things which boys liked. That made him very companionable to us, for I was very little more than a boy myself.

Q. And all the other young people? A. Yes, Sir; I thought he was the most charming man I ever saw.

Q. You thought so then? A. Yes, Sir.

Q. And in looking back you think so of that period? A. Do I think now that that was my thought at that time?

Q. Yes, Sir; in looking back upon him as you remember him, you think of him at that period as the most charming man you ever knew? A. Yes, Sir; I have since met men, who in all those qualities I think excel him very greatly, but at that time, in those early years, Mr. Beecher was my man of all men. I had not seen the world so extensively, and had not measured him with other men.

Q. Well, I don't now speak so much of admiration or abilities as of the regard for his character, and these qualities that you have mentioned. You say you thought he was charming? A. I loved him, Sir, next to my father.

#### MR. TILTON'S ESTIMATE OF MR. BEECHER.

Q. Now, up to what period of your acquaintance with Mr. Beecher did you retain these opinions concerning him and these feelings towards him? A. Well, Sir, as I grew older and mingled with the world and saw other men, the fine gold of my idol gradually became dim. I saw that he was not the greatest man in the world, nor the pleasantest man in the world, nor the frankest man in the world. I met other men his peers, other men his superiors, as time grew on and I grew older. I suppose that is the common experience with all young men—that they have idols in their youth, and as they grow older their idols are overthrown. That has been the case with most of mine.

Q. Did these successful rivals of Mr. Beecher in your estimation come into as intimate and constant companionship with you as he did? A. I don't know to whom you refer when you speak of successful rivals.

Q. You have just described them; that you found better, &c.—in your esteem? A. For instance when I came to know Mr. Charles Sumner, I ranked him very much beyond Mr. Beecher, both intellectually, morally and in every other way; when I came—

Q. About what date was that?

Mr. Beach—Let him answer.

The Witness—When I came to know Mr. Greeley intimately I put him at a considerable height above Mr. Beecher, both in point of intellect, of morality, of sincerity and of unselfish devotion to the public good; I might mention other men, but if you mean to ask me whether the men who in my later years were high in my affection and admiration—if you mean to ask me whether I ever became as intimate with those men, as in my early life I had been with Mr. Beecher, I should have to say no, unless, perhaps, Mr. Greeley formed an exception.

Q. Now, about the dates of these elevations above Mr. Beecher which your larger acquaintance among men assigned to the new acquaintances. You have given us only when you got acquainted with Mr. Greeley and when you got acquainted with Mr. Sum-

ner. Now, if you can, give us the date—my point was—when you began to change in your estimate of Mr. Beecher—about, of course? A. My only answer to that question is, Sir, that in proportion as I enlarged my acquaintanceship among public men, here and there one rose around me to a greater height than Mr. Beecher. He stood among them; he was among the great men of the country; but there were great men before Agamemnon, and there will be great men after.

Q. Well, that still leaves us a little vague as to when the time was, for we don't know all these facts that you do, and we are trying to get at it. A. Well, Sir, the process of change that brought up other men in my estimation to an equal rank with Mr. Beecher, and brought up some of them to a superior rank, began so long ago and was so imperceptible in its progress that I could not note its beginning. I should not be able to fix any such date in my own mind.

Q. Now, how early did there come to be, if at all, any cooling or break in regard to the sentiments and affections which you entertained towards Mr. Beecher? A. I don't know, Sir, that there was ever any actual break between Mr. Beecher and myself through any of the political divergencies to some of which you have alluded, and the chief of which was consequent upon the Cleveland letter. He would be better authority on that subject than I am. I have reason to believe that he was very sore touching the comments which I made on the Cleveland letter, still it did not break our friendship. I remember distinctly having a talk with him only a few days after the publication of that letter and of my comments on it. What I mean distinctly is, Mr. Evarts, that I ceased, as I grew older, to look upon Mr. Beecher as a leader, either in politics, or art, or religion; not that I dethroned him in my respect, but that he was less to me, as I grew older, a leader than he had been originally.

Q. Do you ascribe that change to him, or to yourself? A. Well, Sir, I think quite likely it was due to my own growth to a certain degree. I think if any other man had occupied the same position in my heart's affection in my youth, I should probably have thought less of him, or at least less of his great superiority over other men, as time progressed, but I was not responsible for Mr. Beecher's betrayal of the Republican party in 1865. That he was responsible for, and his church rose up against him.

Q. Oh! well, now. A. And he retracted it in the Academy of Music.

Q. I won't go into any church dissensions. It is only your relations to Mr. Beecher. Now, when did you come to a pretty firm notion that Mr. Beecher was not as great and important a person intellectually as you had supposed? A. Well, when I was perhaps 25 or 26 or 27 years old; still I must give you that answer very indefinitely.

Q. And that opinion has increased, has it not, since then? A. Yes, Sir.

Q. Now, do you remember—? A. Do not understand me, Mr. Evarts, as disparaging Mr. Beecher's intellectual powers now, not at all.

Q. You still have a certain respect for him? A. I have a re-

spect for his strength. I respect the giant's strength, as the poet says; though it is base to use it with a giant's strength.

Q. Do you remember coming to a conclusion that Mr. Beecher had got his growth and was to decline in public power and influence and others were to pass beyond him? A. I do not understand your question, Sir.

Q. The stenographer will repeat it.

THE TRIBUNE stenographer repeated the question.

Mr. Beach—Do you mean intellectual growth?

Mr. Evarts—Yes, Sir; not his bulk.

Mr. Beach—It may be growth in public estimation, not necessarily bulk.

Mr. Evarts—Well, it means his intellectual position and the public's opinion.

The Witness—I don't know, Sir, that I ever stopped to consider the question whether Mr. Beecher, in my judgment, had come to his intellectual growth or not. I don't know whether he has come to it yet.

#### WHERE MR. TILTON ESTEEMED HIMSELF MR. BEECHER'S SUPERIOR.

Q. Do you remember comparing yourself with him upon the occasion of your discussions about church missionary appropriations, if that describes the occasion, and that you had overmatched him in that controversy? A. That speech is in a pamphlet, Sir; it will speak for itself. I know he was wrong; it is very easy to beat a man any time who is in the wrong.

Q. Well, now, rather it is your conclusions and consciousness about it than the fact that I am asking whether you then came to the conclusion that you had quite overmatched him in that fight? A. Well, Sir, if I had come to that conclusion, I should not have any right to state it here.

Q. You are excused from any immodesty in the statement, for it is required from you as a part of your testimony. A. If I should say that I have overmatched him in that struggle it would be immodest. If I should say that I had not I should lie.

Q. Very well, now we have got the truth. Now, in the Cleveland letter controversy and the political diversions and antagonisms that grew up then, did you then think that you had overmatched him in sagacity and authority, both in the principles you assumed and in their acceptance with the party? A. No, Sir, there was no discussion at that time; all that I did toward the Cleveland letter was simply to use the journal which I edited, and which was, to a great degree, the mouthpiece of the Republican party. All that I then did toward the Cleveland letter was to enter my protest against that crime against liberty which that letter committed.

Q. Crime against liberty? A. Crime against liberty. And if you will ask me what that crime was, I will state it.

Q. No, no.

Mr. Beach—We will ask that.

Mr. Evarts—If it is important to my learned friends they will draw it out.

Mr. Fullerton—Yes, we will get it.

Q. Now, this feeling toward Mr. Beecher, as you have de-



scribed it, and its modifications, as I understand you now, met with no serious catastrophe of any kind, until this matter of 1870? A. No, Sir: we always remained personal friends until 1870.

#### MR. BEECHER'S RELATIONS TO MR. TILTON'S FAMILY.

Q. I judged that from your last answers. Now, during all this period, what were Mr. Beecher's relations to your family or your household? A. Well, Sir, I was married in 1855 by Mr. Beecher.

Q. Run through your residences, if you please. You were married in 1855? A. Yes, Sir.

Q. Now, where did you reside first, and for what period? A. I resided first at No. 48 Livingston-st., Brooklyn; I don't know how long.

Q. At your mother-in-law's? A. Yes, Sir.

Q. Mrs. Morse's? A. Yes, Sir.

Q. Or Mrs. Richards, she was then, I think? A. Yes, Sir; I then resided in Oxford-st., Brooklyn.

Q. Have you stated how many years you resided in Livingston-st.? A. I don't remember.

Q. Well, several years, wasn't it? A. Yes. I don't know how many several is. Then I returned to Livingston-st. and bought a house, where I now reside.

Q. Well, then you went to Oxford-st., and was that residence at some greater distance from Mr. Beecher's than your more recent residence? A. Yes, Sir,

Q. It was in another quarter of the town? A. Yes, Sir.

Q. How long did you live in Oxford-st? A. That I could not say.

Q. Well, a number of years? A. Yes, Sir; a number, I think.

Q. And you cannot give us the beginning or the end of the period? A. My impression is, that I moved away from Oxford street about eight years ago. I won't be certain; eight or nine years ago.

Q. Did you go from Oxford street immediately to your present residence, or did you go back to Mrs. Morse's family? A. My impression is I went directly to my house which I had bought, but all such dates lie in my mind in great obscurity. Still, I will endeavor to find them for you.

Q. How far back, then, does your present memory place the date of your going to your present Livingston street house? A. I should think eight or nine years ago.

Q. That would be about 1865? A. 1866.

Q. 1865 or 1866? A. I think I went there in the Fall of 1866. That is my present recollection.

Q. Now, Sir, in the early years of your married life, was Mr. Beecher in the habit of coming to your house, while you were in Oxford street, we will say, and previous to that? A. No, Sir.

Q. He was not. Were you and your wife in the habit of going to his house? A. I was in the habit of going to his house, but my wife was very shy and modest, and very seldom went with me.

Q. But you went there very frequently in connection with your employments? A. Yes, Sir.

Q. Your employments were such as to carry you to his house? A. During the early stages of my assisting Mr. Beecher, when he was chief editor of *The Independent*, I went to his house carrying him proofs and having consultations and so on quite frequently.

Q. Didn't you report his sermons, or something of that kind, before that? A. Yes, Sir. He did not deliver his sermons in his house.

Q. But I didn't know but the proofs, &c.? A. I don't remember that that took me to his house so much as when I became his assistant editor of *The Independent*.

Q. Now, during these earlier years, did you urge upon Mr. Beecher to be more frequent in his visits to your family—to your house? A. Yes, Sir; I always used to be glad of his coming, and always asked him to come again, and scolded him when he did not come.

Q. You understood at that time that your wife had a great admiration for him, did you not? A. I don't think I asked him to come so much on her account. In those early years, she regarded him as so great a man that she was a little afraid of him.

Q. Yes, that I understand, or at least I have seen it so stated. But don't you remember urging him to come because your wife had so great an affection for him, and you wished him to come? A. Not exactly that. I used to urge him to come for this reason. I always wanted Elizabeth to share in anything that I had. I thought that Mr. Beecher paid a great deal more respect to me than he did to my wife, and, therefore, I wanted him to come and make himself a guest in my house, not merely for my sake, but also for hers.

Q. Did you not feel in these early years, until you urged him to visit your house, that in comparison with some other of his parishioners, considering your intimate relation with him, he rather slighted your family? A. Yes, Sir.

Q. So you urged him to repair that wrong and please your wife by coming there? A. Please me by coming there.

Q. Pleased you by coming to see your wife? A. Yes, Sir, I always considered that any honor paid to her was a great delight to me; and if he slighted her I chided him for it.

Q. Did he ever slight her in this sense? A. He used to be very frequently with me, walk the street with me, went to picture galleries with me, into the libraries with me, everywhere around the town with me, and he very often came to my house. I thought I was stealing away too large a share of him and that my wife ought to have a larger part of him.

Q. It was for that that you chid him and urged him to come to your house? A. Yes, Sir.

Q. Did you not use expressions of this kind to him, that there was a little woman at your house that loved him dearly, and urge him to come? A. I don't know whether I did or not, but if I did it would have been perfectly true.

Q. Now, after your removal to your present house, after you left Oxford street and before the period of 1868, we will say now, were not Mr. Beecher's visits at your house more frequent than they had been at Oxford street? A. Oh, yes. I don't

remember that he was ever in my Oxford street house once. Perhaps he was, but I don't recall it.

Q. At any rate there was a very great difference in that respect. A. Yes, Sir.

Q. Now, when did you begin to be absent from your family for the purposes of your lecture engagements; I mean for any lecture season or period of time? A. I am afraid I cannot answer that question. My present impression though—I fear it will not be altogether accurate—is that my first prolonged trip of lecturing in the far West was in the Winter of 1864 and '5, somewhere there. Perhaps I am wrong about it.

Q. Well, and from the time that that habit of your life commenced, did it continue every season, and up to what time? A. It continued almost every season. My impression is that in the Winter of 1870 and '71—yes, more than my impression, my exact knowledge is that I did not lecture.

Q. Yes; that has been stated before. A. Yes, Sir.

Q. Then you did lecture in 1871-'2? A. Yes, Sir.

Q. Was that the last year—your season of lectures? A. It is the last season in which I made any extensive trip.

Q. Then from 1864-'5—if that was the commencement—up to 1871-'2, with the omission of 1870-'1, you had this employment of a portion of your year? A. Yes, Sir.

Q. And was it substantially the same portion of the year; was it from Fall into Spring? A. Yes, Sir.

Q. Now, in reference to your lectures and this employment—this adoption of that mode of public influence—was that a subject of conversation between you and Mr. Beecher; was that one of the things that his interests made the subject of conversation with you, or your confidence in him the subject of conversation with him? A. I don't remember of ever having any talk with him in regard to my lecturing. If I had it does not come up to my mind at present.

Q. Before going on these seasons of lectures, do you remember having desired Mr. Beecher to call upon your wife during your absence? A. I don't think I ever made him any such request later than the time of the Cleveland year; perhaps I did, but I don't think I did.

Q. You mean later than until after that occurrence? A. Yes, Sir.

Q. But before that you did? A. I think quite likely I did; yes, Sir.

Q. Was it a habit of your wife, in your daily letters that you have spoken of to you, to mention Mr. Beecher's calls? A. Yes, Sir.

Q. How frequently were you and your wife visitors or guests at Mr. Beecher's house, and through what period of time? A. The last time I was ever at Mr. Beecher's house that I remember was when our army lay at Bladensburg, if anybody knows that date, when I came home from Washington with a commission for his son in the artillery.

Q. You connect it with that occurrence? A. Yes, Sir. It was when Simon Cameron was Secretary of War.

Q. That was about 1861. You think that was the last time you were ever at his house? A. I believe that is the last time;

nevertheless I may have been there since; if so I don't remember it now.

Q. Your not going to his house after that period is not an indication that there was any change in your relations with him at that time, is it? A. No, Sir; not with him personally.

Q. Not with him personally? A. No, Sir; I could not explain why I didn't go there after that period without involving the name of a lady of his household.

Q. I suppose it is not necessary to go into details, perhaps, but was your absence owing to any disposition on your part toward Mrs. Beecher, or any disposition on her part toward you? A. Yes, Sir; owing to a disposition on her part toward me.

Q. Now, this occurrence that brings Bladensburg to your mind was an occasion on which you performed what Mr. Beecher regarded as a very great personal service for him, was it not? A. He so regarded it. Yes, Sir.

Q. And so far as your disposition in that act, he was entitled to regard it as an act of friendship upon your part, was he not? A. I always thought he overestimated the service, and gave me more gratitude than my act required.

Q. That is in amount; but your disposition was as friendly as the act was friendly? A. My purpose was not only friendly, but it was affectionate and loyal.

Q. And he so understood it? A. Yes, Sir.

Q. And, perhaps, overestimated it? A. I think he did.

Q. But you have always known that he regarded that as a very gracious service that had been rendered to him in a point in which his affections were greatly interested? A. He told me that I had saved one of the members of his family from destruction; I didn't see the imminent destruction.

Q. It had relation to his son's position in the army, had it not—one of the sons? A. I would rather not say to what it refers.

Judge Neilson—General facts.

Mr. Evarts—General facts.

Q. It had relation to his son? A. I don't know how I could explain it without casting some disparagement on the member to whom I allude.

Q. You can say whether it alluded to the son in the army? A. I will say it if you take the responsibility of evoking it.

Mr. Evarts—I don't provoke any answer than that—

Judge Neilson—"Evoke" was the word he used.

The Witness—I simply say this, that under the direction of the Court I undertake to keep out the names of third persons in my narrative, particularly where to mention them would be to disparage them.

Mr. Evarts—I have offered you an opportunity of saying yes or no to a question.

The Witness—Ask me the question; I will say yes or no.

Mr. Evarts—The last question I put to you was whether that service had relation to his son in the army? A. It had relation to his son out of the army.

Q. His son who had been in the army? A. Yes, Sir.

Q. And who afterward went back into the army? A. Yes, Sir.



## PAIGE'S PORTRAITS OF TILTON'S FRIENDS.

Q. Now, do you remember having a portrait of Mr. Beecher painted, and what time it was? A. Yes, Sir.

Q. When was that? A. To the best of my recollection, Mr. Beecher began to sit for that portrait in the Fall of 1868, and the picture was finished in the Spring of 1869.

Q. In what way and at what time did you propose to him that he should allow you to have his portrait painted? A. I told Mr. Beecher that I wanted the portraits of a few of my personal friends, the men who had been a good deal to me in my public life, and who had been connected with the cause of liberty, and I named Wendell Phillips, Horace Greeley, Charles Sumner and Henry Ward Beecher. I proposed to have the portraits of those four men painted by William Paige, whom I regard as the first of our American artists. The first of the portraits painted was that of Wendell Phillips, which now hangs on my wall.

Q. And the next? A. Mr. Beecher's was the second. Mr. Greeley had made one or two calls to the studio to have his portrait painted. Mr. Sumner had done the same.

Q. You did not actually succeed in getting portraits of the others? A. No, Sir.

Q. Now, do you remember when that portrait was sent to Mr. Moulton's house? A. I cannot remember the exact date. I think it was some time in the Fall of 1870, or perhaps in the first month or two of 1871.

Q. And there it has remained ever since. A. Yes, Sir. My recollection was that it was sent there in the Summer of 1870—my best recollection at present.

Mr. Beach—What is that?

The Witness—I was saying that my refreshed recollection is that it was sent there in the Summer of 1870—still I may be wrong about the exact date; but I may be totally wrong as to that date, because I have not thought of it since.

Mr. Evarts—You mean the date when it was sent to Mr. Moulton's house? A. Yes, Sir. But I remember the date of the receipt.

Mr. Evarts—We will put this paper in evidence, if your Honor please. [Reads]:

Received by Theodore Tilton, by draft from Aurora, N. Y., dated February 25, 1869, \$500, being payment in full for portrait of Rev. Henry Ward Beecher.

April 1st, 1869.

Q. That is your writing, is it not? [Handing paper to witness.] A. It was my money that paid for it.

Q. That is your writing? A. Yes, Sir; all except the signature, which is William Paige's.

Q. Signed by William Paige? A. Yes, Sir.

[Marked "Exhibit D 58."]

Q. You say the date of sending to Mr. Moulton you cannot fix with any certainty, as you have never thought of it since? A. I have never thought of it since as being connected with any particular event or date.

Q. Now, up to the time of July, 1870, had you observed in the demeanor of Mr. Beecher towards your wife, or of your wife towards Mr. Beecher, any variance from that ordinary relation

which you had been familiar with? A. No, Sir. One or two little incidents happened a number of years before that, which Mrs. Tilton explained away and which left no impression on me.

Q. They passed by? A. Yes, Sir. They had gone by.

Q. There was nothing in the later years that you noticed in their demeanor towards each other different from what you had always seen? A. No, Sir.

## THE TILTON-MOULTON FRIENDSHIP.

Q. Now, with regard to Mr. Moulton, you have given us the general circumstances of your acquaintance with him and familiarity. How confident and intimate were your habits of companionship with him in general? I mean, now, to leave out any relation to this subject which has been testified to by him? A. Well, Sir, for many years Mr. Moulton and I have been bosom friends—a very high, noble man, and much beloved. My affection for him was very strong, and we were very intimate.

Q. And his disposition towards you of the same character? A. I think I may say that it has always been so.

Q. And that carries you back to your boyhood? A. Yes, Sir.

Q. And continues up to the present time? A. Yes, Sir.

Q. Were you in the habit of having amusements together, such amusements as men have?

Mr. Beach—Well, that is very general.

The Witness—We had not time for many amusements. We used to go fishing occasionally.

Q. Go to places of amusement together, and the theater? A. Oh! yes, Sir.

Q. And such like? A. Yes, Sir, we have gone to the theater together, and to the opera. I thought you meant sports like fishing.

Q. It covers the whole matter that would be the natural companionship between intimate friends in regard to amusements, or the habits of Mr. Moulton and yourself. A. Well, Sir, I don't know that—that if you mean whether we played cards together, or played billiards together, or anything of that kind, we never had any such amusements.

Mr. Evarts—Well, it is time enough for you to impute that to me when I ask it.

Mr. Beach—I think your question embraced that class of amusements.

Mr. Evarts—Especially as I never play.

The Witness—I may have misunderstood you. I intended to answer your question properly.

Mr. Beach—The answer was perfectly proper.

Mr. Evarts—I didn't seek to inquire into the particulars of your amusements.

The Witness—I thought you asked me whether we had the amusements that men ordinarily have.

Q. Those which you usually took, did you usually take them together? A. Yes, Sir.

Q. And how much were you in the habit of being at his house at meals as a formal guest or as a social guest? A. After the destruction of my own house, Mr. Moulton's house

was really my home—that is to say, it was the home of my thought and solace.

Q. Now, how about the meals; how much were you in the habit of taking meals there, either as a formal guest or socially? A. Oh! I was there a great deal, a very great deal.

Q. And from what period did that form of intimacy date, or habit date? A. From the first of January, 1871.

Q. Now, throw this outside of any of these dates—that we may very well understand, but we will say prior to the first of January, 1870, which is a year before, what were your habits of personal and social intimacy in that regard, about being often at his house at meals, either socially or as a formal guest? A. Oh, very rarely at his house at meals before that.

Q. Very rarely? A. I took my meals at my own house before that; after that, I very rarely sat at my own table.

Q. And generally at his? A. Not generally, but very frequently.

Q. Now, when you had occasion to seek a confident friend, as I suppose that you had—I understood that you had, in this month of December, 1870—was there any one else that was at all comparable in his relations with you, to Mr. Moulton, as the person that you should confide in? A. There was no man among my personal friends at that time in whose ability, integrity and loyalty, all combined, and in whose genius of administration and great courage of thought and action, that I could compare with Francis D. Moulton.

Q. And you resorted to him in that view, and in the relation that he then held to you as a friend? A. I did, Sir; and had occasion to be thankful for it ever since.

Q. And that selection on your part has, in your judgment, been justified by his conduct towards you since? A. Yes, Sir; I think that Francis D. Moulton is the successor of Sir Phillip Sidney in all that is honorable, manly and magnificent in friendship.

#### A FIVE MINUTES WRANGLE.

Mr. Evarts—[To Mr. Morris.] Now, have you got those letters ready?

Mr. Morris—We have not, Mr. Evarts; I find they are written on different sheets, and they were not pinned together, and we will have to select them to-night. I had my young man assorting them out, but he brings parts of them here only. We keep them separated.

Mr. Evarts—Those you have got together, will you let us have them that we can look over them to-night—those that are within our call.

Mr. Morris—You have got all that we have got perfected. We will have them ready for you in the morning.

Mr. Evarts—I say those that you have got, if you will let us have them to look over to-night.

Mr. Morris—I say you have got what we have got perfected. We have got some parts here, and we will get the balance.

Mr. Tracy—We have only got three letters.

Mr. Beach—And that is all you will get.

Mr. Fullerton—That is all you are entitled to.

Mr. Evarts—We can subpoena the witness, I suppose, and get them.

Mr. Morris—Subpenaing the witness would not entitle you to take the letters from the Court. You don't propose to take the letters from the Court.

Mr. Evarts—We don't ask to take the mass of letters; we propose to take what you have selected so that we may save time to-night as well as you.

Mr. Morris—I say we have those.

Mr. Evarts—If your Honor please, I pass to another subject, in which I need all these letters to be here that I can get. [To Mr. Morris.] Why don't you produce them?

Mr. Morris—Because you are not entitled to them.

Mr. Evarts—Why should we not have them as we had them before?

Judge Neilson—I understand the counsel promises to produce the letters in the morning.

Mr. Morris—Yes, Sir; but we produce them when the Court opens in the morning. They cannot call for letters and take them away.

Judge Neilson—I understand you will produce them here in the morning.

Mr. Morris—Yes, Sir.

Mr. Evarts—If the witness insists he will not part with letters over night, that is all right.

Mr. Morris—He does insist upon it.

Mr. Evarts—I suggested that we should have them in order that we might save time as well as you.

Mr. Morris—We propose you shall have them.

Judge Neilson—Is the jury ready to retire?

Mr. Beach—Wait one moment, if your Honor please.

Mr. Evarts—[Handing letters to witness.] Look at those letters and say if they are letters from your wife. One of them is incomplete, is it not? A. Those two are letters, and this is part of a letter.

Mr. Evarts—[To Mr. Morris.] Mr. Morris, this is incomplete.

Mr. Morris—Yes, I know it is.

Mr. Beach—[To Mr. Morris.] See if you can restore the balance, Mr. Morris.

Mr. Morris—We can if we have the parts we have got.

Mr. Evarts—I believe this has been printed.

Mr. Morris—No; only a portion of it.

Mr. Evarts—The letter of February 3d, 1868, which I put in evidence, will be marked "Exhibit D 59;" the letter of February 20th, 1868, will be marked "Exhibit D 60," and the letter of —

The Witness—Let me look at that again.

Mr. Evarts—The imperfect one?

The Witness—No, the one you think is imperfect.

Mr. Evarts [handing letter to witness]: Yes, Sir; that is the one.

The Witness—That is imperfect, evidently.

Mr. Evarts—Yes, Sir; there is no doubt about that. The letter dated February 26th, 1868, will be marked "Exhibit D 61."

[The letters were marked respectively "Exhibits D 59, 60 and 61."]



Mr. Beach—[To Mr. Evarts]—Which of those is incomplete? Mr. Evarts—it is the first one, February 3d, 1868.

Mr. Beach—I don't know that this incomplete letter—how happens this?

Mr. Morris—They were on different sheets of paper and they became separated.

Mr. Beach—It seems to me in its imperfect condition it ought not to be introduced. I have not the letter to see.

Mr. Evarts—Then we will take all we can get.

Mr. Beach—Well, not when you can have the whole of it.

Mr. Evarts—If we don't get the whole of it, we will take this part of it.

Mr. Beach—That is all right.

Judge Neilson—Our uniform plan is to have the jury pass out first, and I wish very much that gentlemen will retain their seats for a few moments. [To the Jury.] Gentlemen, be in your seats at 11 o'clock in the morning.

Mr. Mallison—This Court stands adjourned until to-morrow morning at 11 o'clock.

The Court was thereupon adjourned until 11 o'clock on Friday.

## TWENTIETH DAY'S PROCEEDINGS.

### MR. AND MRS. TILTON'S CORRESPONDENCE.

LETTERS BETWEEN THE PLAINTIFF AND HIS WIFE PRIOR TO 1868—A DAY DEVOTED TO THEIR READING—ABSENCE OF THE USUAL INTEREST IN THE CASE.

There was nothing all day but the monotonous reading of Mr. Shearman, relieved occasionally by Mr. Evarts going over the correspondence of Mr. and Mrs. Tilton, covering the years between 1865 and 1868, inclusive, extracts from which have already been published. There were blinking eyes and nodding heads in the gallery, and looks of weariness upon the faces of the idle counsel. It was without doubt the most uninteresting day of the trial.

A discovery which caused some comment was the result of the comparison of an extract from a letter of Mrs. Tilton, in Mr. Tilton's "Statement," and an original copy of the letter itself. It was found that Mrs. Tilton's language had been changed in the Statement. She wrote, "To love is praiseworthy, but to abuse your gift of influence is a sin." In Mr. Tilton's Statement the sentence read, "To love is praiseworthy, but to abuse the gift is a sin." Mr. Tilton said that the statement was in Augustus Maverick's handwriting.

Mr. Tilton came into court a few minutes before 11 o'clock on Friday, and going directly to the witness-chair waited for the proceedings to begin. His cross-examination was not resumed for a little time,

no one appearing to be in a hurry to enter upon the day's work. Mr. and Mrs. Beecher came in a few minutes after Mr. Tilton. Mr. Beecher's face was very ruddy, and wore a pleasant smile as though the walk from Columbia-st. in the cold wind had raised his spirits and animated him. He and Mr. Beach shook hands and chatted together with an appearance of pleasant cordiality.

During the reading of the letters by Mr. Shearman, Mr. Tilton sat quietly in the witness-chair. His eyes were turned during most of the time to the sunlight on the window curtain behind the jury. He apparently took very little interest in the letters read, but was ready in giving all the explanations asked of him by Mr. Evarts.

Francis D. Moulton came into court soon after midday, for the first time since the conclusion of his testimony. He took a seat behind the jury, from which Mr. Tilton alone, of those interested in the case, could be seen by him. He only remained in court about half an hour.

Judge Reynolds occupied the bench with Judge Neilson during the afternoon.

## THE PROCEEDINGS—VERBATIM.

### MR. BEECHER'S EARLY REGARD FOR MR. TILTON

The Court met at 11 a. m., pursuant to adjournment.

Mr. Evarts—[To Mr. Morris.] Have you got the letters?

Mr. Morris—We cannot find them according to the dates here. I have got them sorted out in years. I cannot find the dates as they are on the schedule handed to me. The dates do not seem to correspond.

Mr. Evarts—Well, give us the year then, and we will see if we can find them.

Mr. Morris—Yes, Sir.

Mr. Evarts—Most of them have been the subject of publication—parts of them. I will go on for a moment with some of the others.

Theodore Tilton was then recalled, and the cross-examination resumed.

Mr. Evarts—Look at that, Mr. Tilton, and say in whose handwriting it is. A. It is in Mr. Beecher's.

Q. Do you remember the occasion and the circumstance under which you received that? A. I remember the occasion to which it alludes. I cannot remember the exact place and time of receiving that little note.

Q. Oh! well, I don't care for that. I mean the occasion. A. Yes, Sir.

Q. Was it in regard to that service in respect of his son, which you have before spoken of? A. It was in regard to what he called that service, Sir.

Mr. Evarts [reading]:

MY DEAR THEODORE: I should be glad if whenever you use this inkstand you shall be reminded of my gratitude to you for love services rendered.

H. W. B.

[Marked "Exhibit D, 62."]

Mr. Beach—Any date?

Mr. Evarts—There is no date.

Q. [To the Witness.] This relates, as its occasion, to the service which you had performed and which he regarded very highly, as you have stated, in reference to his son, does it not? A. Yes, Sir.

Q. And it was accompanied with the gift of an inkstand? A. Yes, Sir. Permit me to say, Mr. Evarts, that I have nowhere said that he regarded it very highly.

Q. He thanked you very highly? A. Yes, Sir; he did. I always thought he overestimated the services, but I never—

Q. Well, that I have understood you to say. A. But I never allowed myself to refer to that, or to say to anybody about it that I regarded it as a very momentous service done to him. I have very rarely alluded to it myself.

Q. Look at that, and say in whose handwriting that is? [Handing witness a letter.] A. Mr. Beecher's.

Q. And that envelope? A. In the same handwriting.

Mr. Evarts [Reading]:

MARCH 17th, 1864.

MY DEARLY BELOVED THEODORE: I thank you. I read your notice of father and mother with tears. All others that I have seen are cold by its side. I felt its sympathy and love deeply.

Yours ever,

H. W. B.

[Letter and envelope each marked "Exhibit D, 63."]

# MR. BEECHER PREDICTS THE GROWING INFLUENCE OF SCIENCE OVER RELIGION.

Q. Look at that and see if it is Mr. Beecher's—say in whose handwriting it is? [Handing witness a letter.] A. It is in Mr. Beecher's handwriting, Sir. I should like to look at it, it is so long since I have seen it.

Q. Well, I will read it aloud to you. A. I was afraid that letter had been lost. I am glad somebody has found it.

Mr. Evarts [Reading]:

JUNE 9d, 1867.

MY DEAR THEODORE: In thinking over our conversation respecting your position on religious matters, it occurs to me that you are liable to do yourself an unnecessary injustice by supposing or affirming that you have wandered from received opinions, whereas it seems to me that you have simply entered that stage of development in which every active mind explores the grounds and reasons of belief for himself. Now, it is impossible for one, unless cautious even to coldness, to pursue such investigations without great oscillations of belief, without seeming at one time averse to one view, and then again seeking it with greater avidity than ever. It is a question so wide, so grave, that one ought not to commit himself upon the hasty result of a year or several years' reading. You seem to me to follow your sympathies largely in investigation. This has its advantages, and is one way of study; but it requires far more time and caution, inasmuch as it will surely lead you to accept things from poetic or emotive reasons, which are but half true, which need and will get by longer experience much modification. The formation of opinions upon religious questions in such a nature as yours is a matter of growth more than of logic. Under such a state of facts, therefore, I would submit whether you can wisely or even truly say you stand on this or on that ground, and whether you do not, in justice to your own final self, ac-

quire all the privileges accorded to those who are investigating. In part I write from experience. I look back upon periods when, if I had expressed the then results of thought and reading, I should have committed myself to views which I have outlived or left behind. I find myself, slowly but surely, going toward those views of human nature and of divine government which have underlaid for a thousand years the Evangelical churches. It seems to me that I discern, arising from studies in natural science, a surer foothold of these views than they have ever had, in so far as theology is concerned. If I have one purpose or aim, it is to secure for the truths now developing in the spheres of natural science a religious spirit and a harmonization with all the great cardinal truths of religion which have thus far characterized the Christian system. I turn with more and more chill and dread from that bleak and fruitless desert of naturalism which so many are hailing as a second paradise. I regard the labors of naturalists as indispensable to the final adjustment of truth, and I would encourage such men as Spencer to say whatever is given them, not because they bare the full truth, but because they bring out the truth, and because the human mind must pass through that stage before it will come to the rest and glory of the final Christianity, the second coming of Christ—morally, not historically—in which He shall reign in heaven and on earth over faith and science, and unite and harmonize both. Believe me, Theodore, that I have great sympathy in your developments, and affection for you, and should be glad to help and sorry to hinder.

I have given up the idea of starting a newspaper. I am sure that I could not bear the strain and yet carry on my church. I am truly yours,

H. W. BEECHER.

[Marked "Exhibit D, 64."]

Q. Mr. Tilton, when your wife left your house, as you have stated, did she leave the house and what was in it, or did she take anything with her? A. I don't know that she took anything with her, except my love and good will.

Q. Very well. And that she has still, has she? A. I cannot answer for her, Sir; I don't know what mischief Mr. Tracy has made in the business.

# HOW THE CORRESPONDENCE OF HUSBAND AND WIFE WAS PUBLISHED.

Q. Now, Sir, there was a publication made of a selection from your and her letters; I mean by "selection" that it was not the entire correspondence. Was that made by you, or through your procurement? A. No, Sir; it was neither made by me nor through my procurement; it was made somewhat against my wish and will.

Q. But pray who did make it? A. Who did make what, Sir?

Q. That publication. A. *The Chicago Tribune*.

Q. Were not those letters left in the house when your wife left? A. Yes, Sir.

Q. How did *The Chicago Tribune* get access to those letters? A. Through the advice and desire of my friend and counsel, Judge Morris.

Q. Ah! did he have the ransacking of the whole of them? A. I think, Sir, he is too much of a gentleman—

Q. I didn't ask about that. I don't know whether he had the opportunity. A. What do you mean by ransacking?

Q. The opportunity for examination.

Judge Neilson—He means did he have the whole of them—did he have an opportunity to examine the whole of them? A. All letters found in the house?



Q. Yes. A. He did; I believe he did.

Q. Was that by the advice of counsel?

Mr. Fullerton—One moment! One moment! I do not see the pertinency of these inquiries.

Mr. Evarts—Then he should not have made the answer about his counsel.

Mr. Fullerton—Oh! that was your question.

Mr. Evarts—I did not ask about the counsel. He threw that in.

The Witness—Do you mean that Mr. Morris did that by the advice of counsel?

Mr. Evarts—No.

The Witness—He is himself counsel?

Mr. Evarts—I mean whether this giving of all these papers to *The Chicago Tribune*, or to its representative, was by advice of your counsel.

Mr. Beach—It does not appear that *The Chicago Tribune* had the letters to themselves.

Mr. Evarts—He has just said they had the opportunity.

The Witness—Ah! you are mistaken, Mr. Evarts; the extracts that were published were communicated to *The Chicago Tribune*; those extracts were made by the advice and at the suggestion of my counsel.

Q. Very well; I thought that I asked you whether *The Chicago Tribune* had access and opportunity to examine all those papers. A. I didn't understand you to put the question so; I understand you to ask whether Judge Morris had the ransacking of those papers.

Mr. Beach—That was the question.

Mr. Evarts—No; you are all in error. The question will speak for itself. In answer to one of my questions the witness said that whatever he then spoke of, it was done by the advice of his counsel. Then I afterwards asked him—or what I intended to ask him was—whether *The Chicago Tribune* had the opportunity to examine all the papers. Now, it seems the witness understood me as applying that question to Judge Morris.

Judge Neilson—Let the stenographer read the question.

[THE TRIBUNE stenographer read the question.]

Judge Neilson—The witness understood "he" to apply to Judge Morris, and I myself so understood it.

Mr. Evarts—I didn't so understand it, and I had no such intention, and therefore did not understand why that answer should be given.

Q. Now, then, you understood my question to refer to Judge Morris, and not to the representative of *The Chicago Tribune*? A. Yes, Sir.

Mr. Fullerton—It was *The Chicago Tribune*—the neuter gender.

Mr. Evarts—But it was the representative of the paper.

Mr. Evarts—Now, any communication or opportunity to examine or know of the letters themselves given to *The Chicago Tribune* or its representative, were they selections or portions that were furnished to it? A. Yes, Sir; the representative of that paper did not see the original manuscript.

Q. How is it you say that they were not published by your act or procurement? A. I will tell you, Sir.

Mr. Fullerton—I don't think that is proper.

Judge Neilson—They were published by his act and procurement, through his counsel, Mr. Morris, and by his advice.

Mr. Evarts—I have a right to ask the witness what he meant when he said they were published rather against his will.

The Witness—Do you wish me to answer?

Q. Yes, Sir. A. During the early consultations I had with my friend, Judge Morris, I put into his hands the papers. He read them and said: "These letters ought to be published, or, at least, liberal and copious extracts from them." I said: "No, they are private letters, and I think there is an impropriety in publishing them." He said, on the contrary, the case was of such seriousness and gravity and had been so greatly misrepresented, that he thought justice required they should be published. He then suggested that good taste, perhaps, would lead to their publication, not here in Brooklyn, in either of the local papers, but at some distant point; and at that time a visit was made to my house by an agent of *The Chicago Tribune*; Judge Morris made his acquaintance, and communicated to this agent written extracts from those letters, and in that way they were published.

Q. Did you in any way communicate with your wife and get her assent to this publication? A. I did not, Sir; my wife was not then living at my house; she had deserted me.

Q. We knew that. Now, in whose handwriting were those extracts which were delivered to the newspaper, as you know or believe? A. In the handwriting of some stenographic reporter. We had half a dozen in our service at the time; I don't remember at this moment who it was that made the copy.

Q. His name is not material. It was a person in that relation? A. Yes, Sir.

Q. From whose dictation did he take them down? A. Nobody's.

Q. You mean he copied them himself? A. Yes.

Q. In shorthand? A. I don't know how they were copied.

Q. No matter; he copied them from the papers? A. Yes.

Q. Let me call your attention to the last part of the sixth article—from *there to there*, and read it [handing witness his own published statement.] After you have looked at it I will ask you a question. [Witness looks at the paper.] Is that an extract from a letter of your wife as given there? A. I don't know how correctly that is printed, Sir; but if it be printed correctly, as taken from my sworn statement, it is an extract.

Mr. Evarts—The passage is this—

Mr. Fullerton—Wait a moment. What is this?

Mr. Evarts—I am going to read the passage for him.

Mr. Beach—We object.

Mr. Evarts—He says if it is correctly printed as he wrote it in his statement it is correct.

Mr. Fullerton—But it does not follow that you can read it.

Mr. Evarts—I propose to read it out and let him see if it is correct.

Judge Neilson—That can be done, and it can be corrected if not correctly printed.

Mr. Fullerton—But the possibility of correcting it does not make it admissible at this stage of the case. In the first place there is the original of this paper somewhere, and it can be produced and not a copy.

Judge Neilson—I understood the witness to recognize that as part of his statement.

Mr. Evarts—And he is now on cross-examination. Part of my substantive proof is that this is the statement.

The Witness—I do not understand you. The passage you want me to read was no part of my statement, but an extract from one of Mrs. Tilton's letters.

Q. But it is in your statement. A. You asked me if it was part of my statement. I said it was, if correctly printed. The original letter is here.

Q. The original of what? A. The original letter from which that extract was made.

Mr. Evarts—I will now read this:

To love is praiseworthy; but to abuse the gift is sin. Here I am strong. No demonstrations or fascinations could cause me to yield my womanhood.

Q. Please look at your statement, and say, after looking at it, whether you can give the date of the letter from which that extract is taken? A. There is no date here.

Q. But what precedes it? A. Do you wish me to read what precedes it?

Q. No; I wish you to look at it and then say if you can give the date of the letter from which that extract was taken? A. I can give it by referring to the letter itself.

Q. I don't ask you for that letter, Mr. Tilton. It is your own sworn statement which is now before you? A. No, Sir.

Q. You cannot answer? A. You say it is my sworn statement. Here is a printed document full of corrections.

Q. There are no corrections that I know of. A. What are these marks?

Q. These are my notes on it. [Laughter.] A. Oh! Now, what is your question?

Q. My question is, after refreshing your recollection by looking at this print of your sworn statement, whether you can say what the date of the letter was from which you extracted that passage that I have read? A. I just now discover, in looking at that a second time, that in between your pencil marks there is a date here—February—something, 1868.

Q. Are your eyes good? A. Not so good as some people's; that looks like Feb. 8th; perhaps it is Feb. the 3d or 8th—I do not know which.

Q. Well, I don't see how my pencil marks interfere with it? A. I didn't notice that line.

Q. Well, is it Feb. 3d, 1868, isn't it? A. Yes, Sir; I think it is.

#### OTHER LETTERS OF MRS. TILTON TO HER HUSBAND.

Mr. Evarts—Now, I will read that.

The Witness—I don't know whether that date is correctly printed in that transcript, Mr. Evarts.

Mr. Evarts—Very well, we will see. We want the letter itself. This is "Exhibit D, 59." [Reading]:

MONDAY, February 3d, 1868, }  
9 o'clock (I think it is) a. m. }

What may I bring to my beloved this bright morning? A large, throbbing heart, full of love, single in its aim and purpose to bless and cheer him. Is it acceptable, sweet one? As

my body grows daily in strength, my enthusiasm bubbles up perpetually, so that I even felt I saw you reflected in my eyes this morning, when my thoughts of you literally filled me as to gush out of my face. Most truly do I love, and I am resolved nevermore to repress the expression of it. I have lived under the fatal mistake that I would make you selfish, but oh! what it has cost me to learn that a large, generous love cannot, in its very nature, minister but to our best and holy states! The picture of your dear face, most constant with me, is one glowing with love, but always bearing the look of one that has suffered. Can I, who am the cause thereof, ever again be indifferent? Nay, the little life which remaineth is consecrated to restore, if possible, the beautiful image I have marred. There is no sacrifice too great that I would not enthusiastically make to this end. If God will only consider me worthy to work with him. I have been thinking, my darling, that knowing as you do your immense power over an audience to move them at your will, that same power you have with all public men over any woman whom you may love. To love is praiseworthy, but to abuse your gift of influence is a sin. Therefore I would fain help restore to you that which I broke down—SELF-RESPECT. Your manhood and its purity and dignity if you feel it is stronger than even love itself. I know this because here I am strong. No demonstrations or fascinations could cause me to yield my womanhood. You have not yet replied to my inquiry whether the giving you my whole heart in my letters offends you. I was with you all day yesterday, Sunday. What holy associations cluster around that day in our own experiences. The morning hours suggesting Mattie's death, and who can tell what that hath done for us, and now the evening memorable forever of confessions, with repentings, cleansing and sacred vows! I wanted to write to you, but could not. I went to church in the morning, was blessed, spoke with Mr. Bowen, who was cordial, and Professor Raymond. He commences another course of readings at the Packer to-night with Henry the 8th—\$5 a course. Were you out—

Mr. Evarts—There the letter terminates, it being an imperfect one. [To the witness.] Now, Sir, will you look at that which is not printed and say if that is a page of your original statement in your handwriting? A. No, Sir.

Mr. Tracy—It is not in his handwriting, Mr. Evarts; it is sworn to.

Q. It is not in your handwriting? A. It is not in my handwriting.

Q. Do you recognize it as a copy of a paper written by you? A. It is in the handwriting of Mr. Augustus Maverick, and I presume from what you show me, these are two leaves from the copy of my sworn statement which I left with the Committee. Let me look at it, please?

Q. And which was signed by you? A. Signed by me.

Q. See if that is the last page of it? [Handing paper to witness.] A. It seems to be all right, Sir.

Mr. Evarts—I will read this now. This passage from the letter, your Honor will notice, is of the date of February 3d, 1868, quite anterior to any dates of difficulty or difference between this pair. I read as it is here.

To love is praiseworthy, but to abuse the gift is sin. Here I am strong. No demonstrations or fascinations could cause me to yield my womanhood.

Mr. Beach—Do you want these marked. [Referring to the slips last shown witness.]

Mr. Evarts—No; I will take care of them.



Mr. Beach—I do not wish to take care of them, but I want to know—

Mr. Evarts—As I get on.

Mr. Beach—[To the Court.] The counsel, after proving these two pages, has read a portion of them, and I ask that they be marked.

Mr. Evarts—That is for me to say, Sir, when I offer them.

Mr. Beach—But he has read from them. He has read them in evidence.

Mr. Evarts—Well, I will take care of my own examination.

Judge Neilson—He purposes to offer them, I suppose.

Mr. Beach—Well, he has read them; we have some rights with those papers.

Mr. Evarts—You will have all your rights, but I will take care of my present examination.

Mr. Beach—I am not troubling your examination; I am asking that a paper from which the counsel reads shall be marked by the Court so that we shall know what it is.

Mr. Evarts—It is unnecessary to mark it at this instant.

Judge Neilson—It should be marked, but perhaps he will read more of it; it must be marked.

Mr. Beach—Well, that is all I insist upon, that it must be marked; we want to use it.

Mr. Evarts—I now read the passage from the original, beginning and ending where this supposed extract does:

To love is praiseworthy, but to abuse your gift of influence is a sin, therefore I would feign help restore to you what I broke down—self-respect. Your manhood and its purity and dignity if you feel it is stronger than even love itself! I know this because here I am strong. No demonstrations or fascinations could cause me to yield my womanhood.

Mr. Evarts—Now, if your Honor please, these two leaves will be marked as the paper shown by me to the witness.

Mr. Fullerton—And as read.

Mr. Evarts—From which I read a passage—to wit, an extract from a letter.

Mr. Fullerton—Yes, Sir; which is a part of the paper.

Mr. Evarts—Well, it is not the whole of it.

[Two sheets each marked "Exhibit D, 65."]

Mr. Evarts—This letter of the 3d of February which I have read, the original letter—the passage that I have read from it—beginning, "To love is praiseworthy," and ending, "No demonstrations or fascinations could cause me to yield my womanhood"—did you not understand from that letter that your wife then considered adultery a sin? A. Yes, Sir; I quoted it as a beautiful illustration of her own sense of the dignity of her sex and of herself as respecting it. That was the use which I made of that extract in my sworn statement to certify to her strength of character at that time.

Q. Exactly; and that she then regarded adultery as a sin? A. Yes, Sir; I think she does now.

Mr. Shearman—May it please your Honor the letters which I now read to the jury are letters written by Mrs. Tilton to her husband. [Reading]:

MONDAY, JAN. 28th. (Probably 1867.)

MY BELOVED: I am very sorry my letters are lost, they contained so much that stranger eyes should never see.

I was obliged to omit my Saturday and Sunday letter as usual.

Mr. Haskell came over Sunday afternoon. We went to hear

Mr. Beecher, who preached an uncommonly fine sermon on the divinity of man, from the text "Ye are Gods." In the morning Dr. Storrs preached for us. A collection was taken up for our city missions, amounting to nearly \$6,000.

Mr. B—— called Saturday. He came tired and gloomy, but he said I had the most calming and peaceful influence over him, more so than any one he ever knew. I believe he loves you. We talked of you. He brought me two pretty flowers in pots, and said as he went out, "What a pretty house this is; I wish I lived here." It would make me very happy if you could look in upon us without his knowing it.

Deacon Freeland called in to-day. He wanted to know if I was good enough to live in so pretty and tasteful a home.

Mr. Shearman—I will pass over a passage relating to other matters.

The picture which came from Springfield has just reached me. I do not like it. It is old, thin and cold looking.

Nevertheless I talk to it, love and caress it. It would please you to know how much Carroll talks of you—often cries to see you.

The children are passing through the stages of the hooping cough very comfortably—thanks to homeopathy. It is nearly 12 o'clock and I must say good night, adding with it my very best love. Soon I shall look again upon your dear face and be satisfied. But if I was traveling about with you I know my body is not in the condition to bear journeying without great fatigue, and though I might look upon your face, yet absent from these children in Winter, I could not say I am satisfied, but when you are in your own home once again I shall then be perfectly at rest. "Oh, haster 'round ye wheels of time!"

God keep us both.

YOUR DARLING

[Marked "Exhibit D, 66."]

Mr. Evarts—[To Mr. Shearman.] Is that marked?

Mr. Beach—Well, I don't know about this letter.

Mr. Shearman—I read what I found written.

Mr. Beach—No, you didn't.

Mr. Shearman—"Probably 1867," is written in ink.

Mr. Beach—Who by?

Mr. Shearman—Not by us; that is very certain.

Mr. Beach—I don't know whether it is very certain or not.

Mr. Shearman—It came directly from your associate.

Mr. Evarts—It was not shown to the witness. It was taken directly from you.

Mr. Beach—The difficulty is, if your Honor please, that Mr. Shearman read the date as if it had been dated 1867.

Mr. Evarts [Handing letter to witness]: That is your wife's handwriting, is it not, except that little memorandum? A. Yes, Sir.

Q. That is not hers? A. No, Sir.

Q. Whose handwriting is that? A. I should judge, looking at it, that it was in the handwriting of one of the stenographers; it may possibly be my own with a steel pen. I very rarely write with a steel pen. I am inclined to think it is my own.

Q. Is that in ink? A. Yes, Sir.

Mr. Evarts—Pale ink. The date of the letter, if your Honor please, as given by the writer, Mrs. Tilton, is marked "Monday, January 28th." Then under it is written, in different ink, a memorandum, "probably 1867," and that Mr. Tilton says is either the stenographer's or possibly his own.

The Witness—Possibly mine.

Q. You suppose that to be the real date of the letter, do you

not? A. Yes, Sir; it would be easy to ascertain by finding out whether January 28, in the year 1867, fell on Monday.

Mr. Evarts—Of course that would help, yes, no doubt. That would fix it really, for within any range we have, there would probably be but one.

The Witness—Yes, Sir.

Mr. Evarts—I was going to ask you, in regard to some of the contents of this letter, that perhaps will fix the date. You heard the letter read, didn't you? A. Yes, Sir; I heard part of it read.

Q. You heard all that was read? A. Yes, Sir.

Q. Perhaps you didn't listen to it. I don't know how that was. A. I was not listening very attentively.

Q. [Handing letter to witness]: I want to know whether, by looking at that letter, you can remember whether the delicate condition of health that Mrs. Tilton refers to as preventing her journey to the West to meet you—whether she was then recently getting up from her confinement? A. I don't remember, Sir, from the date.

Q. You cannot give the birthdays of your children from memory? A. No, Sir.

Q. Have you no mode of giving us the exact birthdays of your children—any family record—any Bible? A. When I had a wife in my house I always referred to her for such information; I have none now, so I have to go without it. There is no record in my Bible; I went the other day to see—I thought there was—but there is none.

Mr. Evarts—We should like these dates, if we could get them, but we have no means of getting them.

The Witness—I presume if you refer to Mrs. Tilton, she can answer you immediately on the spot.

Mr. Shearman—January 28, 1867, came on Monday.

Mr. Evarts—January 28, 1867, Mr. Shearman says, did come on Monday.

The Witness—Yes, Sir.

Mr. Porter—We have a calendar here.

Mr. Evarts—So that letter dated January, 1867, written very soon after your new house was occupied by you, refers to the house—the present house, &c.? A. I think so.

Q. The Fall of 1866 you went in there? A. I think I did; yes, Sir.

Mr. Evarts—I don't know about the dates of these births, but it occurred to me that I had seen something to fix them. Perhaps it is not so. Now, go on, Mr. Shearman.

Mr. Shearman [Reading]:

SUNDAY EVENING, Feb. 3d, 1867.

MY DEARLY BELOVED: I bless the inventor or creator, whatever his name—who made the calendar, and February the shortest month in the year. My thoughts now are ever on your home coming, and it is a daily growing anxiety how I shall present myself and abide in your love. Our children will delight and satisfy you for they have grown in every good work and way and are altogether lovely.

Carroll is certainly the personification of love itself.

If love be the fulfilling of the law, when are not the conditions for his highest life established?

I realize with the Vicar of Wakefield, how great a wealth we have in our children. They are already high up—beyond us—

as Christ looks upon pure living. He has revealed himself to my babes. Blessed be his name.

The Church, to-night, was filled with medical students, Mr. B—preaching before their Christian Union. He certainly is greatly roused this Winter, and works most earnestly.

Will you not on your return throw in your inspiration and join us in fulfilling our vows as members of this Christian Church? Your beautiful spirit would help many there, as it does everywhere. And to me there is no spot so sacred in all this earth as Plymouth Church! Full of delicious memories. If we now, with all its members, bring into it our various rich and growing experiences, its later days would gloriously fulfill the enthusiasm of its beginning. These are my own thoughts, darling, and I feel that of late years we have both come short of our duty here.

I, with all my soul, have joined with you whenever any line of duty seemed plain to you; and from henceforth have I more utterly consecrated myself thither. Now, therefore, I write your sympathy of thought and action with me. This Winter has blessed us both; though suffering, I rejoice unutterably that your bodily vigor is sustained, and even better than when you left home. I am not as well in body, though I do feel I have made some victories over my temper. I have striven for Christ's sake—who has been most precious to me—and for yours to array myself with purity of thought and action—and you know what it costs of struggle!

Once more my beloved, accept my most devout thanks for your patience and fidelity to help me onward and upward. Yet I dare not invite you to come and live again with me lest I bring disappointment and misery upon you. My soul is full, my eyes overflow while I write.

I must be victor! But I will sin if I go not to bed and sleep. At church, to-day, Mr. Studwell wished me to thank you for the reply to his letter, as you had paid no attention to it. Good night.

Your own.

Mr. Fullerton—These letters don't appear to be marked as we go along.

Mr. Shearman—I will have them marked.

[Letter dated February 3, 1867, marked "Exhibit D, 67."]

Mr. Shearman [Reading]:

SATURDAY EVENING, February 1st, 1868.

MY BELOVED: The last day of the week I have been accustomed to look for your home-coming, so that to-day and this evening I am peculiarly lonely. Your precious letter from Pittsburgh came in your stead, which I have read four times already. *Blessings on you, dearest*, they have the last Winter's ring in them. I did not dare expect you would remember your aforetime punctuality. Your closing lines are, "have I not a great heart when all its foundations are stirred?" Yes, most truly. Beloved, generous, noble, pure, I do thoroughly feel beyond all other men. Forgive me for telling you when forbidden. By so much as you are *great*. I too stretch out to reach you and *thus* we do lift up each other. *God forbid I may never more drag you down!!* Oh, well I know as far as I am capable I love you. Now, to keep this fire high and generous is the ideal before me. I am glad you carried a trunk, and are comfortable. I realize with mingled pain and pleasure, how much more satisfactory your physical life is away from home, and may be an ideal wife and children are in fact more helpful to you even as the memory of my Father has been more of an inspiration to me than his presence would have been. In this, separations become blessings; yet, with myself, darling, in my present growing passion and admiration and sympathy, I am only *perfectly contented* and restful when you are with me. These latter months, I have thought, looked and yearned for the hour when you would be home with longings unutterable; surely you must have *felt* the joy in my eye. I know that now mother, children or friend have no longer possession of my heart: the supreme place is



yours forever; are you really glad to hear this, my sweet? When you speak your love for me it is delicious harmony to my soul.

The flowers you ordered came to-day; I kissed every one, then I gave them over to Flory to arrange, as she desired to. I gave a few to gladden Carroll, and as I read the line to him in your letter where you say you were "more proud to be loved by your little children than to be the President of the United States," large tears filled his eyes, and he said, "I do love my Papa." We do not at all realize the blessings we have in our children! I have filled my sheet with the tale of my love—so old but *ever* fresh and gushing in me. I will now tell you of the guests I have had since I wrote you yesterday.

Susan Anthony came to tea last night, and went away after breakfast. I learned nothing particular from her; was entertained with her talk; and regarded your wish by curbing my enthusiasm for you, while I must impress unmistakably the minds of all I meet the single end and aim of my life—to be faithful in so far as I *know* to the great privilege whereto I am called. "Elizabeth, thou art highly favored, chosen among women," are words ever sounding in my ears.

About eleven o'clock to-day, Mr. B. called. Now, beloved, let not even the shadow of a shadow fall on your dear heart because of this, now, henceforth or forever. He cannot by *any possibility* be much to me, since I have known you. I implore you to believe it and look at me as in the Day of Judgment I shall be revealed to you. Do not think it audacious in me to say I am to him a good deal, a rest, and can you understand it I appear even cheerful and helpful to him. He told me in confidence that Mrs. — and his family were at his house; that Mr. G— had sold most of his insurance policies; what remained was not equal in amount to what Mrs. G— had been accustomed for pin money—that on Monday she with her three younger children would return to their place in the country, while he, Mr. B—, kept the three older sons at his house, for they could not even pay the cheapest board, and on a personal matter he intended to get employment for them—they having been with their father in business only. He said his sympathies had gone out for them more than if they were his own—they all as a family seemed so unfitted for poverty.

After seeing the children, I asked him if he would go with me to Mattie's and see the bust—without any hesitation he said he would. I immediately got ready, and I took my first walk to the Court-st. cars, without much difficulty, so that I feel free again and will walk out every pleasant day. We found neither Mattie or Mack at home to my great disappointment, seeing only Laura Bradshaw and Gip—and your dear head, darling, which on second seeing is more than ever to me. Mr. B— expressed great satisfaction with it, feeling it was far better than he expected to find it, and he believed as correct a likeness as you could have. He is very desirous for Mack to try him. We came directly home, nothing noteworthy occurring, save that he left at the door with the remark that "he had had a very pleasant morning."

You once told me you did not believe that I gave you a correct account of his visits, and you always felt that I repressed much. Sweet, do you still believe this? I strive in my poor word-painting to give you the *spirit* and impression which I give him, and he to me. It would be my supreme wish and delight to have you *always* with me. This trinity of friendship I pray for always. I gave Miss — her money. She desired me to thank you sincerely for your generosity. Carroll will come down for dinner to-morrow.

I will try to have a letter awaiting you at every appointment. Now, darling, *good-night*. I hope to dream of you, love.

Tell me frankly what I can be or do for you, because I am altogether

YOUR OWN.

[Marked "Exhibit D, 68."]

Mr. Shearman [Reading]:

NURSERY, Sunday eve, March 8, 1863.

MY BELOVED: All alone, save Eliza in the kitchen and the children all asleep about me, while I have been trying to imagine my state when I shall again live with you and behold your precious form. *This*, I think, I have decided—no more chidings, scoldings! An inexpressible tenderness has grown up in my soul towards you. I never saw my path as clear as now—that whatever you may do, say or be, it becometh me to be the Christian wife and mother! The full meaning of those words, when developed from a nature impotent as mine, I most thoroughly understand. If I may lead my children *now* to an intimate love and trust in God, He manifesting Himself to babes, as He has promised, then to this great source of happiness strong bodies be added, I will risk intellectual training and knowledge. You say in your last, you are so drained and wearied, that when you come to me you can but bring "skim milk." It hath been so in all times past with both of us. Perhaps we have not had our love up high and supreme; the one delight of our lives, or maybe our frailty—weak bodies—have not been able to meet the demands of society and home duties. Mr. Beecher gave us a pleasant episode yesterday—a visit of more than an hour. He said, with great earnestness, you never could know the gratification your letter appreciating "Norwood" gave him. He meant to give you the American edition and me the English, or vice versa, so that we may have one each.

\* \* \* \* \*  
That I may be acceptable to you is my constant prayer.  
Good night. WIFEY.

[Marked "Exhibit D, 69."]

Mr. Shearman [Reading]:

FRIDAY MORNING, January 22, 1869.

MY DEAR BELOVED: Your Monday's letter from Clinton, Ohio, telling me of your convalescence I have just received, and if my poor, dull, heavy "letters do you any good as a medicine," I have cause for gratitude. I'm sure, now that you have actually begun to speak every night, the necessity for constant effort, I hope, may keep off despondency—and I will promise to write more cheerily because of my successful efforts to live better.

My heart aches this morning at the death of Mrs. Monroe. She was the first of the three friends to go—mother and Mrs. Lombard remain. I am praying for mother all the time. You remember that she came over most sympathetically to dear Paul's funeral. \* \* \* \* \*

Forgive me that I want so much love—yet my soul cries, "Give, give!" I believe I am big enough to supply even your big heart with love—if you'll only let me.

Farewell, WIFE ELIZABETH.

Mr. Shearman—In passing over a passage or two, I say that none of these passages that are omitted reflect anything on any one; they are all perfectly proper, of course, but they have some allusion to the lady's domestic affairs, and to the domestic affairs of other ladies. Everything that is omitted is eminently proper, but I try to omit anything that might disclose family affairs of other ladies; but in doing so by accident I omitted this clause, not that it is of any importance, but I will read it:

"Phæbe and Alice have sent me their autographs, so I have them all now but yours. Frank Moulton came round to read me his letter from you. It delighted him greatly. Flory appears now quite well again."

[Marked "Exhibit D, 70."]

Mr. Shearman—There were two exhibits that were put in last night that were not read, which I will now read—two letters of 1868. One has been read. [Reading]

THURSDAY EVENING, February 20, 1868.

MY BELOVED: I am so lonesome and heartsick for your companionship to-night that I hesitate to write lest my mood may depress you. Yet I cannot wish you home, for I am persuaded you are happier where you are. While I long to be with you, I am haunted continually with fears that your cheery face will soon be shadowed and the dear head droop! This thought is agony to me, and I have spent many hours since your absence weeping because of it.

I would fain make the path smooth for your feet, or in other words direct the children and the household that they minister harmony only, but I know I cannot, and I am afraid! You are at Clinton to-night. I try to fancy each night where you are, when you begin your lecture and when end, the lonely bed after the weary day, &c. But I know you are happy and make others happy. This is a comfort to me. I bless God for your health and your generous love to me. I took my second lesson on the melodeon to-day, to my great satisfaction. The most that I have yet learned is, how very little I know. This knowledge is stimulating. Oliver told me that Mr. Hatfield had written to Gilbert Haven urging him strongly to accept *The Independent* office. But I hear that the Methodists will make him a bishop. I am greatly interested in the paper and all that pertains to it. Will you talk with me in the future about all that interests you? Let us be more frank and free toward each other. The children are all well.

I have paid all your bills but Journeay's, but in order to do so I drew on my salary, \$40; the losing of the \$50 from Warren would have prevented that; as it is, I am very much pinched, as I could not spare \$80 last month and \$40 this. Our household expenses are nearly the same as when you are home, for the family is large and we eat good food, though no dainties. Bessie is doing better since her head is clearer by being left alone from her unfortunate relatives. I do not scold her any more, darling. She has been the one cause of trouble between us since we have lived in this house; but, as I said before, I cannot bear to make you miserable by my harshness. I think in this you will find a change in me.

Good night. "Good angels guard thy sleep."

WIFEY.

Mr. Evarts—Mr. Tilton, who is "Oliver," referred to—the first name, Oliver; your wife speaks of Oliver? A. Oh, Oliver Johnson.

Mr. Shearman [reading]: WEDNESDAY, Feb. 26, 1868.

MY DEAR HUSBAND:  
Let me tell you of the events—

Mr. Evarts—What is that date?

Mr. Shearman—February 26. It is in Mrs. Tilton's handwriting.

Mr. Evarts—The only date is Wednesday, February 26th, put in by the writer. There seems to be a memorandum. [Handing witness the letter.] Say whose that is? A. I judge it to be mine, Sir, written with a steel pen.

Mr. Evarts—Probably 1868. The same reference to the calendar will settle that.

The Witness—Judge Porter can settle that in a moment.

Mr. Shearman—The stenographer will understand that these two papers that I have here were marked last night—"D, 60," and "D, 61."

Mr. Evarts—It appears that Wednesday was the 26th of February, 1868.

Mr. Shearman [reading]: WEDNESDAY, Feb. 26, [1868.]

MY DEAR HUSBAND: Let me tell you the events of yesterday. Directly after breakfast I read aloud the entire editorial sheet

and the Washington letter of *THE TRIBUNE*, concerning the Impeachment. I wish I might be with you at these times. Andy has gone a little too far. Congress acted promptly at last. I know how this turn in affairs affects your spirits. God is showing His face again after so long a hiding. How blessed is this re-assurance. Now, I say to myself—with Andy removed, and your wife restored, and your debts most paid, what remains but to be happy? I feel jubilant, for God is good. After reading I went to the Police Station, where I met seven other ladies, and their seven clocks all waiting for the Judge to hear our complaints; he did not come until near 4 o'clock—losing my dinner and my patience, besides my clock will be of no value probably as they have all been at the pawnbroker's, knocked about, cases broken and works destroyed to many of them. Then I went to Aunt Hannah's, as I knew her enthusiasm over the day's news needed an outlet to a sympathizing ear, and staid there to tea. Was too tired to write you on coming home and went to bed.

I forgot to tell you in my last that on Monday eve I heard Mr. Raymond read "Othello" to my great delight and profit, I trust. I am going to-day to visit Mattie, making the most of Mrs. Mitchell's stay with me. Mr. B— put our baby to sleep, laid him down and covered him up, the last time he was here—said whenever we could not quiet him, send for him, and he would come. His call amused the children very much. This crumpled sheet is the only scrap of paper in the house. Excuse it and the writing, my sweet. Oh, how proud I am of you. I'm sure we will be happier in the future— Had we begun our lives where now we start! All well; expect your mother this week.

Farewell.

YOUR OWN.

[Marked "Exhibit D, 61."]

SUNDAY, Feb. 7th, 1869.

MY BELOVED: I have just finished reading to Emma Lowell's "Extreme Unction," and the chapter in "Norwood" of Parson Buell's grief in the death of his wife. It is very touching, and I realized for a moment what that agony must be, the parting at the river between a husband and wife who have truly loved—how inevitable it is! God only can sustain the one who remains, while He enables the one who departs to say, "I shall be satisfied!"

Allow me to say, without cant, that God has given me a blessing to-day. He has enabled me to do something for Him, and that conscious privilege overflows my heart utterly. At home he helped me to be patient, willing, yea, glad, to spend myself for others; and in the Bethel—my little room was crowded—the interest increases in my class. They all love me. I feel it, because I too love every one. I do indeed feel grateful for the encouragement they give me in these new labors. I tell you rather more at length than usual of my work here, because I earnestly wish your sympathy and to feel free to talk with you of everything in which I am interested—as in "Auld Lang Syne." How'er imperfect we may appear to each other, yet the dear Lord does not hesitate to use us. Now, to-night, I give myself to you—my best, my worst, "just as I am," take me once again into your confidence; bear with my follies as in early days. I consecrate myself to you so long as I shall live, before God this night as a fitting close of this Sabbath day. Forgive all my infirmities and help me to overcome to final victory. Wilt thou? So will I you, if you permit. The freedom with which you write of Paul gives me great pleasure. Then the fountains are unsealed and we flow together. I talk not so much of him—yet this new mysterious feeling I know, which I never before have uttered—a kind of awe, or waiting, listening to learn what he will do for me—and an agony of fear at times lest I should fail by reason of sin what he could bring. Already in many things I am a *changed woman* through his precious ministrations; yet, fearing such a statement may be too positive, let me modify it by a *woman changing*.

Your change of route upsets my reckoning, and I am not able



to place you to-night, which I regret because, as I told you before, I have known not only what place you are each night, but also which letter of mine you will find there. After Friday I shall be all right again; meanwhile I hope you will enjoy to the utmost your recreation with dear friends.

I have no items of news to-day. I am trying to be a *cheerful, good woman*—that's good news.

Good-night. If I might only write an easy, flowing, beautiful letter to my Beloved!

ELIZABETH, Wife.

P. S.—Lizzie Wood sent her love to you to-day, which I forgot, and Frank Moulton called to say that he had spoken to the prisoners at the Penitentiary and would write you about it. Mattie mailed you a letter for Danville.

All these things I forgot earlier in my letter.

YOUR OWN.

[Marked "Exhibit D, 71."]

Mr. Evarts—Mr. Tilton, this refers to a domestic affliction in the death of your child Paul, does it not? A. Well, Sir, my mind was wandering away during the reading.

Q. I only wanted to fix a date if I could? A. If you will let me see the letter a moment.

Q. This letter is dated Feb. 7, 1869. I call your attention to this: "The freedom with which you write of Paul gives me great pleasure." A. That was our little son who died.

Q. He died the preceding Summer, did he not? A. Yes, Sir; in 1868.

Q. "Mattie mailed you a letter from Danville." Who is Mattie? A. She, Sir, was our dear and honored friend Mrs. Bradshaw.

Q. The lady who has been a witness? A. Yes, Sir.

Q. And there is a reference in one of the letters to May—by the name of May, and in reference to a bust of yours. Who was May? A. That was a reference to Miss Mary Bradshaw, the daughter of Mrs. Bradshaw.

Q. The daughter of this same lady? A. Yes, Sir; she is now the wife of a professor in Washington, and was at that time an art student, and had made a bust of Mr. Beecher, and also one of myself.

Mr. Shearman [Reading]: "August 3, 1869."

The Witness—Mr. Evarts, before the next letter is read, perhaps I ought to modify my last remark. I did not get the date of the letter that you read, and possibly those two busts had not then been made, but were made afterwards.

Mr. Evarts—Oh, well, but the letter refers to one bust—your bust, and to Mr. Beecher's wish to have another.

The Witness—Yes, Sir.

Mr. Beach—It was not at the time of the last letter, but the previous letter.

The Witness—Very well.

Mr. Evarts—The letter itself indicates that. They were looking at her bust of you, and then Mr. Beecher said he would like to have her make one of him.

The Witness—And she made one of him afterwards.

Mr. Evarts—Afterwards.

Mr. Shearman [Reading]:

AUGUST 3, 1869.

MY DEAR HUSBAND: My heart sorrows to-night for my loss in the death of Mrs. Elliott. Pity dear mother, as one after one of her friends leave her. Minister to her if you can, my darling.

Oh, dear Theodore, may I not persuade you to love the Lord Jesus Christ? Do not let this entreaty estrange us more, for my

pillow oft is wet with tears and prayers that we may come into sympathy in our religious natures. Do have patience with me, for, as the time remains to us, I feel as though my heart would break if I did not speak to you—not that I am right in any sense, and you are wrong; God forbid! but we are not one in feeling, and it is impossible for me to be indifferent, especially while God blesses me with dear children.

I once again ask forgiveness if I have offended you by showing my heart. Our dear baby grows finely. Carroll suffered much to-day by having nitrate of silver put upon his fingers, but he desired it himself; he is desirous to reform this habit.

I am extremely glad that Mr. Greeley is to be with you. I hope you will have unalloyed comfort with him. Give him my love, as you know I have it for him. Make him as comfortable as you can. Your letters coming daily are my sustenance really, although they give me only your other life.

I commenced a letter to-day to Mrs. Moulton, acknowledging her kindness. I weigh 108½ pounds. I hope to reward your loving care by an increase of ten or twelve pounds when next you see me. Good night!

Your dear wife,

ELIZABETH.

[Marked "Exhibit D, 72."]

Mr. Shearman [Reading]:

SUNDAY EVENING, Feb. 28th, 1869.

MY BELOVED: "This is the last day of Winter," little Carroll said as he got into bed to-night. "Papa will soon be here." "Yes," I replied, "Spring will certainly come, and I hope in three Sundays more Papa will come as surely!"

We had a delightful "sing" after tea—read in turns two chapters in the Bible, then followed our little prayer meeting. I felt it was good and acceptable. You were not forgotten, be assured. Blessings must follow the prayers of little children for their parents.

My Bethel meeting to-day was *good*. I am sure no one of the little band went away uncheered. How munificently God rewards the faintest, feeblest efforts we make for the good of others.

I will go back a little and tell you yesterday's story, a day so full as to crowd out entirely my writing you. First of all, then, my heart overflowed toward you, because of your generous, kind letter concerning mother. She was quite touched by it, and desired me to give you her thanks for your sympathy, saying again, as she has often said before, "Because I made an idol of *you*, Elizabeth, is why Theodore has made me so wretched. I have felt he did not appreciate you, and often neglected you, but I want to forgive all the agony he has caused me."

This was the first time your name has been mentioned since her stay with me. Forgive the indelicacy of quoting her remark; it seemed to me a concession on her part toward you; the least sign I must welcome as a promise of the fulfillment of my life-long prayers—my married life, I mean.

\* \* \* \* \*

My head and heart have been so full of divorce cases since you left—this difficulty of mother's following on the heels of Mrs. —has been a kind of experience of which I have had quite enough. Were I a lawyer I would certainly change my profession or beg, rather than investigate such miseries.

\* \* \* \* \*

Now, my sweet, after so long a tale let me for our mutual refreshment turn to our own sweet love. I bless God that it abideth! Among the terrible changes of many hearts, God has kept us steadfast, with a growing love, admiration and respect for each other. Oh, let us praise His name forever! All the differences, misunderstandings, we have had are as Whittier says "like mountain ranges overpast."

"If God be for us, who can be against us?"

Give me your patience while I spread out before you the fruitage of your beautiful love, like the rare-cut flowers of a bouquet. They are the closing words of your letters—select and precious,

reminding me of the soul-stirring benedictions of the Apostles' Epistles.

Fruit No. 1.—"But among all my losses, I have lost no jot or tittle of my ever-increasing love for the sweetest of wives, and the fairest of children." "My heart longs for you to-day."

"Grace, mercy and peace.

Ever thine."

"You and the chicks, and the house, and all are in my thoughts every day and hour."

"Good bye, and all hail!

Ever yours."

"With overflowing love I am now and ever, yours devotedly."

"I send you now, as ever, the fervid love of yours devotedly."

"I think you and I are yet to walk in Paradise together."

"I would rather have my wife and children at this moment than all the honors under the sun."

"Every day of my life I love you more and more, and shall unto the end."

"With my whole soul I am yours faithfully."

"If now I had a little personal comforting and petting from the little lady at No. 136, I would be perfectly satisfied."

"But Paul and I keep our companionship. To you, his mother, be God's peace." "I love you fervently and entirely. Blessings with you always." Then, fearing that these extreme delights "would make a woman mad outright," you have six epistles ending: "Yours in dust and ashes." "Yours doggedly." "God help your sorrowful and groaning husband." "Yours achingly," &c.

How like you the receiving a letter from yourself? I keep a list of these delicious tit-bits. Most tenderly believe it. Thou knowest that I love thee.

Good night.

WIFE ELIZABETH.

Mr. Shearman—There is a postscript, though not marked so.

[Reading]:

A little home news. Went with Mattie to the organ concert. I send the inclosed programme.

\* \* \* \* \*

Do you remember when you returned last year Mr. Mitchell brought little Paul down in the parlor to see you, and the smile of welcome he gave? I wish so it might be that the dear little expected might be brought to you in like manner. You would then avoid my suffering, and all would then be happiness. Flory says: "Oh, Mamma, if you were not obliged to suffer and be sick, how happy we all should be."

I have a great unwillingness that those who love me should suffer for me.

Once more, good night.

YOUR DEAR WIFE.

[Marked "Exhibit D, 73."]

Mr. Evarts—It is past our hour of adjournment.

The Court here took a recess until two o'clock.

#### ANOTHER INSTALMENT OF LETTERS.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Evarts—If your Honor please, we owe to your Honor and the jury an apology for being a little late. We were engaged in the examination of some papers, and the lapse of time did not strike us as of very much concern.

Mr. Shearman—I am sorry that we have to read the letters a little out of order. There is some difficulty in finding them.

Mr. Shearman then read the following letter, which was marked "Exhibit D, 74."

FRIDAY NIGHT, Dec. 28th, 1866.

MY OWN TRUE MATE:

One of the most severe days we have had. Have not been out except to call on Mr. Ovington. A consultation was held

upon his case to-day, resulting in assuring his wife that with great care, he might recover. I seem to have some power to cheer him, wherefore I give about an hour a day to him. I was obliged to call in Dr. Barker, for Flory was sick this afternoon, and already his remedies have helped her. She had anticipated much during the holidays—a visit to Jo's, and other places have been given up—but she bears it well.

Annie had a fine time at Emma Beach's party last night—it was a grand affair. She will not go back to Nyack—stay with me awhile, and I hope you will decide to send her to Lexington, tho' perhaps rest from study this Winter would be best. She seems very happy with me, and while you are away I am glad of her company—since she has learned to be agreeable, and is far more helpful than of old. Burrows's wife has a son two weeks old. I have not been there.

My beloved, I have been thinking of my love for Mr. B—considerably of late, and those thoughts you shall have. I remember Hannah Moore says: "My heart in its new sympathy for one abounds towards all." Now, I think I have lived a richer, happier life since I have known him. And have you not loved me more ardently since you saw another high nature appreciated me? Certain it is that I never in all my life had such rapture of enthusiasm in my love for you—something akin to the birth of another babe—a new fountain was opened, enriching all—especially toward you, the one being supreme in my soul. "I love thee with the breath, smiles, tears, of all my life!—and if God choose I shall but love thee better after death."

It is not possible for any human creature to supersede you in my heart. Above all you rise grand, highest, best. I praise God that He is teaching me of His great mercy and love, shown by His gift of so great a heart as your own, to be mine. For many years I did not realize the blessing. What remorse it brings to me! Memories bitter, awful! But to return to Mr. B—. He has been the guide of our youth, and until the three last dreadful years, when our confidence was shaken in him—we trusted him as no other human being. During these early years, the mention of his name, to meet him, or, better still, a visit from him, my cheek would flush with pleasure—an experience common to all his parishioners of both sexes. It is not strange, then, darling, that on a more intimate acquaintance my delight and pleasure should increase. Of course I realize what attracts you both to me is a supposed purity of soul you find in me. Therefore it is that never before have I had such wrestlings with God, that He would reveal Himself to me, and ever in my ears I hear "The pure in heart shall see God." Oh, fulfill this promise unto me, my Lord and my God! Darling husband, I have endeavored to express to you, without cant or any such thing—my true feelings, as they appear to me. It is true that I live in an agony of soul daily; nevertheless I am profoundly happy in my privileges, opportunities and blessings.

God is with us. We have had great experiences this Winter. He will keep us, I am sure—our trust is in Him.

Let us pour out our souls in prayer that we may never sin as before, when we meet again. Will it be possible that I shall ever again cause you a pang. God in great mercy forbid!!

Good night.

Oh, for one embrace. My whole being goes out toward you. I believe it does. May I not hope now that between us there is a true union of souls? Holy Spirit, searcher of all hearts, incline us wholly toward one another!

Yours,

Mr. Evarts—Mr. Tilton, I will ask you one question about this Annie. She appears to be mentioned in some other letters also? A. Mrs. Leslie.

Q. She was then a young lady? A. She is still, Sir.

Q. I was going to ask about her age? A. A grown young lady. What was the date of that letter?



Q. A grown young lady at that time? A. Yes. What was the date of that letter?

Q. December 28, 1866. A. Well, she was a young maid at that time.

Mr. Shearman—Have you any more letters, Mr. Morris?

Mr. Morris—Here are some on the list we have not found yet.

Mr. Shearman—I will now read this letter:

MONDAY MORNING, Feb. 24th, 1868.

MY DARLING OF DARLINGS: I am most happy to sit down in writing talk with you. This is my first break in my daily correspondence. Saturday to Monday, owing to Sis and Eddie, Joe and Fanny coming up on Saturday to spend Sunday with me, and Sunday, when I yearned to write to you after church, was prevented by calls from Mr. Ovington and friend, Mr. Augustus Storrs, Mr. Freeland, and the Rev. Mr. Adams, which occupied the whole afternoon. Then I gave an hour to my children, to our mutual delight, and the evening passed with Joseph and Fanny, until weary, I was forced to go to bed without giving you my Sabbath love. To-day I thank you; I thank you for a look into your heart—for, with one or two exceptions, you have not shown it to me since you went away. Your work and fatigue is the cause I know. Oh! my beloved, I feel unutterable love and sympathy for you in your anguish and "heart-break," as you say. It is too true you have given largely, grandly, and bountifully of your best love to friends, aye even to your wife, while in return you have received most often indifference, and at best, love not deserving the name, in comparison with thine own. Do you wonder that I couple your love, your presence, and relation to me, with the Saviour's? I lift you up sacredly and keep you in that exalted and holy place, where I reverence, respect—and love with the fervency of my whole being. Whatever capacity I have, I offer it you. The closing lines of your letter are these words: "I shall hardly venture again upon a great friendship—your love shall be *enough* for the remaining days." That word *enough* seems a stoicism in which you have resolved to live your life. But I pray God He will supply you with friendship pure and wisely love, which your great heart demands, withholding not himself as the chief love, which consumeth not tho' it burn, and whose effects are always perfect rest and peace. Again, in one of your letters you close with "faithfully yours—that word 'faithful' means a great deal." Yes, darling, I believe it, trust it, and give you the same surety with regard to myself. I am faithful to you, have been always, and shall forever be, world without end. Call not this assurance impious. There are some things we know. Blessed be God. I sorrow more than you can, for your lost friendship—as my soul stings with remorse that I was the cause—and yet for all this, you love me. Henceforth let no one point the finger at your Christianity. The love which is in Christ Jesus abounds in your soul. Flory is persistent in her wish to unite with the church. Shall she do so when you return, at the May communion—that—

Mr. Shearman—This letter is broken off here, and there should be another sheet, which is lost.

[The letter was marked "Exhibit D, 75."]

Mr. Shearman then read the following, which was marked "Exhibit D, 76:—"

TUESDAY AFTERNOON, Feb. 18th, 1868.

MY DARLING HUSBAND: You have made me rich to-day; your letter from Lincoln came this morning, and this night Eliza brought me the full epistle from Chicago. I read every word eagerly; drop instantly whatever I am doing when the postman comes, and give myself up utterly, body and soul, locking the doors to prevent intruders, just as we are wont to do after an absence. I am heartily glad you are with the dear good friends in Chicago. How I wish I could have been with you? I hope you have impressed upon Elizabeth

my profound respect and love for her. How grateful it was to your poor tired head to rest there in the bosom of those dear ones! I am so glad, so thankful, the opportunity was given you, even tho' it cost the Des Moines appointment and two letters of mine awaiting you. I never realized as now I do, your arduous labors, and the great hinderance and drag I have been to your young, beautiful life.

I yearn to caress and tenderly care for you, read, sing, and gladden those dear eyes once again. I feel as never before, how dreadful a thing it is to wound or stab any human heart by sharp, stinging words. Perhaps the dear Father has given me another lease of life, that I may learn this lesson. I praise him for his goodness. Then again, darling, I have felt so heart-sick that there are so few great men and women. The idea of a faithful, true marriage will be lost out of the world—certainly out of the literary and refined world—unless we renew it.

It amused me much to hear of your namesake, Tilton Prince. Prince Tilton is our pet's name. I shall want to tell you of our dear friend, Mr. B—. He has opened his heart, as you would love and admire him. To believe in one human being strengthens one's faith in God. Now, what shall I add of love? I am devoted to you. I want that your latter days may be the brightest and richest of all your life. It is fearful to contemplate the wrecks there are in human life.

Believe in me,

Yours always,

ELIZABETH, WIFE.

Mr. Shearman here paused, looking for some letters.

Mr. Morris—We have here more of hers, that are not on your list, however.

#### OTHER LETTERS OF MR. TILTON TO HIS WIFE.

Mr. Shearman—While searching for one or two more of Mrs. Tilton's, not found easily at present,—counsel not agreeing as to them,—I will read some letters of Mr. Tilton to his wife.

Mr. Shearman then read the following, which was marked "Exhibit D, 77."

AT THE OFFICE,  
Tuesday Morning, Aug. 21, 1866. }

MY WELL-BELOVED WIFE: I enjoyed your recent visit as I never enjoyed a similar occasion in all my life—in some respects, more than any preceding similar visits. The memory of it lingers in my mind, as the fragrance of a garden clings to one's garments long after walking through it. It is only now and then, I suppose, in the lives of the best of good people, that they appear to each other at the very brightest point of moral development and spiritual ripeness. But it is certain that you showed yourself very lovely to me on that beautiful Sunday evening. I register that scene in my memory, classing it with the other choicest remembrances of my whole life, ranking it among the joys that are never to be forgotten. I would to God I were not so easily overcome by my own worldly-mindedness as to be brought so quickly and fatally down from my heavenly moods and the earth. But this belongs to the infirmity of human nature. I have walked like a king ever since that evening. No labor has been too arduous—no sacrifice too great for me. It is such fruition that our mutual love ought always, or oftener, to bear. May God make us wise, rich and pure.

Forever yours,

THEODORE.

Mr. Shearman next read the following, which was marked "Exhibit D, 78."

LAPORTE, INDIANA, Dec. 6, 1866.

MY DARLING: I have ridden all day long, and am just arrived, at dark, about an hour before my lecture. I am so excited in

mind by a sense of my being imprisoned away from home, barred out by impassable walls, hindered from seeing you by cruel obstacles, that I can do nothing at this moment but make an outburst of feelings. I ought now to be composing myself for my task, but I feel more like taking flight eastward, in the next train. All day long I have been reading "Griffith Gaunt." Go to the bookstore, buy a copy, and read it—that is, if you would like to be doing the same thing with myself. I am not yet far enough in the story to know its moral meaning, but it has excited me considerably. It turns on jealousy. I am not jealous. Nor do I know the feeling. I think any man is a fool who is jealous. If he is jealous without cause, he is foolish: if with cause, more foolish. But I am somewhat disturbed, and have been for a long while past, at the diminishing faith which I entertain for human nature. Human characters do not seem so lovely to me as they once did. Perhaps this view is temporary—the result of a passing shadow. Or, rather, perhaps it is because I do not entertain so fond an opinion of my own character—its moral strength and unbending rectitude—as I once supposed. I could justly entertain. During my travels, I have had profound reflections on my life. I am a weak man, supposed to be strong; a selfish man, supposed to be the world's lover and helper: an earthly minded man, supposed to be more Christian than my fellows. I cannot endure the mockery: it breeds agony in me. At this moment I am completely wretched, yet expect in ten minutes to step forth to a public welcome. The outside life is one thing, the inside another. I dare not show the inside to the world. And yet I must show it perpetually to God. I am endeavoring to live a manly life—not what the over generous world shall so esteem, but what in my inmost conscience I shall know to be such. I have had many wrestlings of my soul with Heaven, of late. I feel myself scarred, spotted, miserable and unworthy. From this feeling dawns the day. I have taken refuge in my lecture at night, sometimes turning it almost into a sermon. I have come to feel exactly as the Prodigal felt. An inward revelation of a man's self to himself is an awful thing. It lifts my face to the eternal world. Henceforth my prayer is that God may keep me nearer to Himself. My life is so unprofitable that I sometimes dare not turn round and look upon it. You cannot guess for what one thing I most yearn to see you. It is to kneel by your side at our familiar evening prayer. My prayers of late have seemed all spiritless without you. I am never so true a man as in my prayers—when I have prayed with my arm around your neck. It seems to me now that I cannot live this Winter without at least seeing you once or twice—if for no other moments than just these greater of all moments. I see with agony in the retrospect, how my life has been marred by social influences coming from your mother—how they disastrously have affected us both. If you should ever appear to me anything less than the ideal woman, the Christian saint that I know you to be, I shall not care to live a day longer. I cannot write further. I must stop to go to my audience. It is dreadful to be so full of feeling as I am at this moment.

God bless you!

THEODORE.

Mr. Shearman then read the following, which was marked "Exhibit D, 79:—"

IN THE CARS,  
NORTHERN INDIANA, }  
Dec. 7, 1866. }

MY DARLING: This rattling train shakes my pencil, but I must endeavor to write to say that I have just finished "Griffith Gaunt."

It is a powerful and interesting story, well constructed, though not remarkably well written. I don't care particularly whether you read it or not. It has not baptized and anointed me like our mutual reading of "Felix Holt." Do you not often recall that sweet evening, in Twelfth street, when late at

night we finished that heroic story? I can see you at this moment, lying propped on the sofa, your red shawl around your shoulders, and your waterproof cloak over your feet. That night and the day that followed it filled me as full of human happiness as my heart could hold. "Griffith Gaunt" ends in a far sweeter and more agreeable manner than one expects when he is in the midst of its pages. But I have never met a character in any romance equal to one which, if I were a romancer, I could draw from a certain woman I know. The novels turn too much on love as a passion, as a jealousy, as a madness, as an intense adoration for the time being, and it is only here and there that one sees in a novel the true and perfect love of a true and perfect woman—the love that swells in the soul rather than in the heart. Men and women who have the mere natural instinct for loving love with the heart; but they who have a true *genius* for loving, love with the soul. The noblest part of love is honor, fidelity, constancy, self-abnegation—not the clasp of the hand, nor the kiss of the lips, nor the ecstasy of fondness. Sometimes that which most delights the heart most cheats the soul. It is for this reason that lovers ought sometimes to be separated. Now, to bear each other in memories, in daily and hourly pictures of the fancy, in constant mutual communings of soul, without a contrast of the flesh, in perpetual nearness, notwithstanding miles of distance, in an abiding reverence, unfeigned, lofty and ennobling. This is the great prerogative of true love.

No man loves a woman as a woman loves a man, until he has attained to such an experience as this of the union of two souls by their noblest possible interchange. But, in some lives this comes not at all; and, in the best lives, it comes only at the crowning moments. O, that we were heroic enough to seek always to live our best possible life! I am trying more than ever.

God help us both. Thine immortally,

THEODORE.

QUINCY, Ill., Dec. 12, 1866.

MY DARLING OF DARLINGS: I have just written two letters to the little girls, and have only a minute left for adding a kiss for their mother. Oh, how I long to see you! I yearn, and long, and pine to be at home. I never knew the strength of my home attachments till this Winter. I never fully comprehended how thoroughly we are a part of each other till this separation. I bleed like a grape-vine broken off. But I cannot say that I am not cheerful. My work seems important, and my Winter (if I am spared through it) will be the most useful one of all my life. I am lecturing in dead earnest. I have a message to deliver. I could not endure to speak night after night on any merely literary or entertaining theme. I believe I love my country purely and passionately and seek her honor and integrity. I must write while yet the strength and life last. I have always had a sense that neither would last for many years.

Ever yours,

THEODORE.

[Marked "D, 80."]

DUBUQUE, IOWA, Dec. 27, 1866.

MY DARLING: I came hither this morning, and found your letter awaiting me. Hereafter I trust I shall receive all your letters. This makes the third time I have crossed the Mississippi, not counting recrossings. The beautiful river this morning was nowhere to be seen. It flows silently under a bridge of solid ice. I crossed in a sleigh. The ride was more than a mile from bank to bank. The far-western atmosphere, by which I mean Iowa, Minnesota and Kansas, is very pure, dry and healthful. To-day is a perfect specimen of such atmospheric healthfulness. After breakfast I toiled up the steep bluffs, clad in my furs, to keep off Jack Frost. My panting and struggling rewarded me with rosy cheeks; but I had no wife near by to kiss them. My health is excellent, but I think I am looking older than usual. Last night the villainous time-table robbed me of my rest. But I am having a long day of leisure to make up



for the theft. I have been busy about three hours in getting off answers to lecture-committees. If I had six tongues instead of one, I could employ them all, and every night. I had a touch of home sickness this morning. It came from the sunshine that poured into my room from the lustrous south-east. The walls, the carpet, the chairs all glowed and glittered under the touch of the Goldsmith. I wanted then a certain shining face to sit in my rocking chair, on whose eyes I might look, and on whose lips I might hang. I allow these and such like words to fill me awhile with a delicious sadness, and then I fight them down and go to work. I don't expect, however, to be lonesome much longer, for I am to meet you in Chicago. Now that the *other* man has gone off lecturing (as your letter mentions) you can afford to come to *me*. You ought to be enjoying what I am enjoying on this magnificent trip—for instance, this afternoon, a dinner-party. Leave home, children, kith and kin, and cleave unto him to whom you originally promised to cleave. You promised the *other* man to cleave to *me*, and yet you leave *me* all alone and cleave to *him*. "O Frailty! thy name is woman." If you can get anybody to pour tea for you, and to take sauce from the servants, and to receive pastoral visits, I shall expect to meet you under the roof of Robert Hatfield.

Yours eternally,

THEODORE.

[Marked "D, 81."]

BATTLE CREEK, Michigan, Jan. 30, 1867.

MY OTHER SELF: I cannot tell you how much pleasure I find in just sitting down, at odd moments, and dropping you a few hasty lines, either about something or nothing, or midway between. This daily, and sometimes twice-daily habit, has done more to keep me cheerful under my inevitable home-longings than I before supposed possible. There is something in the exchange of letters that ranks next to the greeting of palm to palm. When I receive one of your letters the sheet seems to contain more than your mere writing; it is something which has been touched by your hand, which has caught a pulse of your feeling, and which represents more than the words can possibly say. I have always felt a little guilty after throwing away even an envelope on which you had written my name. Think, therefore, what a bankruptcy I suffered when I lost the packet of all your daily letters for six weeks! I lost them from my too great care; for I carried them in my pocket, which I could always reach, and would not trust them to my valise, which was not always under my eye. I had filed them carefully, put each in its order of date, interleaved them with the few letters which the children wrote, and kept the roll as sacred archives. I meant, on my return home, to put them in an iron safe, and bequeath them to the children, to show to Florence's sons and daughters how much their grandfather and grandmother loved one another in the olden time. But those delightful manuscripts belong now to the lost literatures of the world.

Ever yours,

THEODORE.

[Marked "D, 82."]

ON THE CARS, CHICAGO TO MILWAUKEE, }  
Tuesday, Feb. 12th, '67.

MY DARLING: I wrote to you a hurried sheet this morning from the Sherman House, while waiting for Henry M. Smith to breakfast with me. He did not come; I ate my breakfast alone. Once again on the cars, and once again confronting a lecture-appointment, I feel that I am once again at work, after my two days of pleasant rest.

And I confess that rest is sweet. I do not mean rest for wearied limbs, though that, too, is sweet; but rest for one's spirit; rest in the midst of a circle of kind and loving friends; rest to one's own vagrant, untamed and unconquerable homesickness; rest in the tranquillity of spiritual peace.

I have been enjoying two days of such rest. The spell is still on me this morning. I rode five hours to Princetown yesterday afternoon, and five hours back, after midnight, on purpose to spend a long and delicious evening with

the Lovejoy family. This family and its influences have helped to make me a better man. The very roof seems to spread over me a benediction. I am grateful for the Providence that ordered my steps last December to the threshold of this cottage. Tarrying with these dear people has been a new experience in friendship—a new delight of life.

The whole subject of friendship has been much in my mind this Winter.

I am satisfied that whoso makes no intimate or confidential friends, both among men and among women, friends with whom he girdles himself round about as with a halo—friends who are props to keep him lifted perpetually toward his highest life—friends whose friendship is a kind of sacred wedding that knows no sex—such a man neglects one of the greatest of human opportunities for intellectual, moral and spiritual growth. \* \* \* The old religious teachings, the orthodox view, the dread of punishment, the atonement, have less and less power over my mind. Of course you will mourn over this. But I must be an honest man. I don't believe in orthodoxy, and therefore I will not pretend to do so. From you as from God, I have no secrets. So I tell you day by day my thoughts. And these are my thoughts this morning. But the car is now growing crowded; a man has taken a seat at my elbow, and I must stop writing. Blessings on your saintly head!

Ever yours,

THEODORE.

[Marked "D, 83."]

Mr. Shearman—I asked for a letter of Feb. 14th, 1867, and it looks as if there were two letters of that date; you have only given us one of that date.

Mr. Morris—That is the only one we have.

Mr. Shearman—This is not the one that is printed. The letter which has been handed us was originally dated Feb. 14th, 1865. It is then altered to 1867. I do not know how to account for that; but it does not correspond with the one that is published, dated Feb. 14th, 1867.

Mr. Fullerton—Oh! yes, there are two of February 14th.

[A consultation here took place among counsel.]

Mr. Evarts—In regard to this letter of January 31st, 1868. Do you consider your search such as to show that it is not in existence or cannot be found?

Mr. Morris—Well, I don't know.

Mr. Evarts—Well, I would like to read this copy.

Mr. Morris—We don't know whether that is a copy of the letter.

Mr. Evarts—We are entitled to one or the other; we want the letter for other reasons. It seems there is only a part of it that is printed here, and we want the part that is printed here if we cannot get the rest.

Mr. Beach—What did you do with this letter of February 14th, 1867?

Mr. Evarts—That is not the one; there are two of that date; that is not the one.

Mr. Beach—If your Honor please, in the last exhibit which was presented [No. 83] Mr. Shearman read I think from the printed book and not from the original, and he has omitted several portions of the letter, they having been omitted in the book, and we think they should be read in connection.

Mr. Evarts—We will read it all; it is Mr. Tilton's letter.

Mr. Shearman—I had no objection to read the letter, but it struck me it was getting on private families.

Mr. Fullerton—Yes, Sir; it strikes you in a tender spot, in my judgment.

Mr. Shearman—If your Honor please, I will read the passages that were omitted; I glanced hastily at it as I was reading it. [Reading:]

I have had abundant occasion this Winter to test the impressions which different kinds of new friends make upon my mind and heart. "Ye have not many fathers in Israel," said Paul; in addition to which I have also found that one has not many mothers, or sisters, or brothers, or friends. The number of people who mate each other—who fit one another exactly—who are (to use your word) "counterparts," is very small. A man must see in his friend something that supplements himself. That for which we hunger in another is that which is needed to keep us from being incomplete ourselves. The best type of friendship, therefore, is that which excites the souls of true friends to their highest spiritual states. My friends are legion, and yet only here and there one affects me powerfully in my moral nature. By most of my friends I am influenced (so far as I can see) for neither better nor worse; but by a few whose names are precious, I am purified and ennobled. Their society is like a ministry of angels. To talk with them, to live among them, to be near them, or simply to be thinking of them is a blessedness.

I have lately realized this in an exquisite and delightful degree.

And this fact reveals the one prolonged mistake of my past life—my association with your mother. I can now plainly see what I might have been if, for instance, I could have lived under such a roof as sheltered me in Princeton, instead of breathing, during all these years, the atmosphere of Livingston-street. If my mother-in-law had been such a woman as Mrs. Lovejoy, and the influences of Brooklyn had been like the influences of Princeton, I believe that I might have grown by this time as unselfish as a good woman. How much more I would then have been to yourself and the children! How many pangs you might have been saved! How many unknown joys you might have experienced! I have not been a wise man or I would not have consented, eleven years ago, to pitch my tent in a bank of fog. Moreover, let us beware of the tragic and dreadful mistake of teaching to our children that when they shall be married their first and chief allegiance will still be to their parents as heretofore, and that only a secondary fealty is sufficient between husband and wife. I have never seen so plainly as I have seen this Winter what Livingston-street mildew I have been carrying on my garments for eleven years. Six months ago I was accustomed to say to myself in my secret hours, "Theodore Tilton, it is time for you to die; your soul grows not whiter but darker: die soon and save yourself from total destruction." But, I believe that if I shall return to Brooklyn at all, I shall return a different man. God grant it! I know that I have tried to wash myself clean at the fountain of a better life."

Then follows the passage: "The old religious teachings, etc."

Mr. Beach—That is February 12th, 1867?

Mr. Shearman—February 12th, 1867. I now read the letter of March 18th, 1867.

TUESDAY, March 18, 1871.  
OSWEGO, N. Y.

MY DEAR WIFE: Although it is now near midnight, and I am much fatigued and very sleepy, I will not retire without first dropping into the mail a line of remembrance and message of love to a woman whom I sometimes vex but whom I always revere.

I spoke in Troy last evening to a large audience—as many as could be crowded into the Brooklyn Athenæum, but I spoke with wretched hesitation and broken fluency—often using ungrammatical expressions, and thoroughly displeasing myself with my performance. But to-night, before an equal and even better audience, I was myself again—easy, hearty, and victorious. So you see that the temporary moods of my mind color

all my work, for the time being, with their own passing hues, whether dark or bright.

But I cannot afford thus to be led away captive of gloominess and bad blood. I must endeavor more completely to conquer myself in future. "Greater is he who ruleth his own spirit than he who taketh a city."

Despondency is my lurking enemy. It lies in wait for me in my most familiar haunts. And it most often entraps me under my own roof.

But I think my two or three recent days of darkness have been, on the whole, a moral benefit, in that they have revealed to my mind its most easily temptable points. It was good for the Pilgrim to go into the Valley of the Shadow of Death. "No chastening for the present is joyous but grievous; nevertheless, afterward it worketh out the peaceable fruits of righteousness."

So, after my overthrow, I rise once again out of the dust, to re-begin the battle of self-conquest—to be again, I doubt not, defeated a thousand times. Well, during all the Winter, I was as one clothed in kings' apparel: and it is very high time, therefore, that I should, for a little while, wear beggars' rags. The soul's life must have its needful changes from joy to sorrow.

I came home from the West respecting myself too highly. My crown there was suddenly taken off and cast to the earth. I am now dispossessed of my portion, and wander like an exile banished from my former complacent self. But, O happy misfortune! that carried a man first into miserable wretchedness in order that it may then carry him, like the prodigal, back to his Father's house.

As Luther thanked God for his sins, so I, too, can thank Him for my sorrowful glooms.

Be assured that whatever happens, whether cloudy or clear skies, I love you boundlessly and forever.

THEODORE.

[Marked "D, 84."]

ROCHESTER, N. Y., March 21, 1867.

MY DEAR PET: I am, in this midnight hour, in the same hotel, and in the same room wherein you and I were quartered eleven and a half years ago on our wedding tour! What a history these years unfold to our backward gaze! Gray hairs have stolen upon us since then; time and care have jointly wrinkled our brows; joys and sorrows have checkered our path; four children have been given to us on earth, and one of these has been taken back to heaven. You have had sickness; I have had toil; both of us may now look back to that wedding pilgrimage and smile at how little we then knew of human life! Thank God, the years grow richer as we grow older! Not yet conquerors of ourselves, we are nevertheless nearer the victory now than then. I would not exchange the present for the past! With what self-complacency I looked upon my life in those "green and salad days!" How strong I thought myself for the battle! The revelations of later years subdue a man's pride by teaching him his weakness. At this retrospective moment, in this charmed chamber, I am humble, sad and calm. Life is sober, as I now look upon it. Death is near, as I now think of it. Heaven is sweet, as I now wait for it. I have not made the best or even a good use of my last ten years. I have less faith in my usual integrity now than at any former period of my life. It is hard to live well. Nevertheless, my dear pet, we will try again to realize more perfectly our ideals. May God bless us both, now and ever. Adieu.

Yours,

THEODORE.

[Marked "D, 85."]

FLINT, MICHIGAN, Feb. 6, 1867.

MY QUEEN AND MISTRESS: I have been thinking of you all the livelong morning, and it is now afternoon. My two letters of yesterday, which I left behind me at Ypsilanti to be mailed to-day, were too barren, dry, and worthless to be sent to such a dear woman as you are. Your own sweet letter, received to-day, makes me chide myself for such chips as I unwillingly sent you last night. No letter of all the dear, delightful many that you have written, has filled me with more pleasure than to-day's. It is the one



which you may recall when I mention that it inclosed Alice's note and the enigma cards. (Thank the dear little girl for writing to her papa, and tell her that this very morning I bought valentines for all my children, including Libbie. Tell her, also, that I have puzzled my brain over the enigma, but cannot solve the mystery.) But I was speaking of your letter. It is so full of your love, that you have, this day, set yourself unconsciously before me in such noble proportions as to hide all the rest of the universe; and nothing, either in Heaven above or Earth beneath, seems at this moment so great, so pure, or so beautiful as your own, true, wifely love for your unworthy husband.

In fact, this morning I was suffering from undue fatigue, owing to an entirely sleepless night; and my mind was in an unclear and groveling frame—haunted with low thoughts. I am a hard subject for self-conquering—as you know. And this morning I could not get any honorable or manly mastery over myself, although I tried hard for the victory.

But when your dear letter came my soul took wings like a hawk. "A word in season, how good it is." A little piece of white paper, with a loving woman's handwriting on it changed the whole face of nature, and the whole temper of my spirit, in a single moment. How powerful and how beneficent is the influence of love! And I now see, by the light of my Winter's experience, that you have been profoundly right in demanding, not only a constant mutual love, but a constant mutual expression of it. Hereafter, I shall judge the needs of *your* heart by the needs of *mine*, and be more prodigal in my daily outpouring of what hitherto has been too often unexpressed or half expressed. Sometimes we allow our loves simply to be taken for granted, whereas we would both enjoy each other's love the more by coining our own into a repeated confession of words. "Confession is good for the soul," says the poet; and I hereby confess that I love you as fervently as any man ever loved any woman on the earth, or perhaps in the heavens.

My disappointment at not meeting you in Chicago was as great as virtually to strike me soul-dead for several days thereafter. I wasted on that blighted hope the juices of one whole week of my pilgrimage. The reaction left me without the power of experiencing and enjoying any high and devout emotions. My heart seemed awhile to be gone, and in its place there was an insensibility to joy. That Chicago expectation was one of the "supreme moments" of a lifetime.

And Alice's letter seems to intimate that you are coming to meet me on my way. Can this be true? I do not allow myself to believe it. For I shall not build such another air-castle as I reared on Wabash avenue, only to have it fall, like Samson's temple, on my head. No; I look forward to the end of my Winter's work, feeling that I shall be repaid for my whole long separation by my first kiss of welcome under my own roof. Dearly beloved, God bless you forever more. Yours,

THEODORE.

[Marked "D, 86."]

LA CROSSE, Wisconsin, Feb. 21, 1867.

MR DARLING: This day I have received your pleasant letter of a week. I look forward eagerly to each new place on my programme for the sake of the letter which I am there to find awaiting me. Your letters have been and are my daily meat and drink. This last letter of yours inclosed your sweet note of Elizabeth Lovejoy—which I shall immediately mail to her in Princeton. In return for the great kindness of the Lovejoys, I sent them some books from Milwaukee—Mr. Towson's writings on Art, the Golden Treasury, a copy of Tennyson, and other volumes. I hope I may get a chance to spend another evening in their college before my return, but I do not see how I can arrange to do so. I inclose to you Oliver's letter, received this morning. So you see that there are men, as well as women, who love your husband. I am sorry to hear that Mr. Beecher had a poor house in Brook-

lyn. In view of his kind attentions to you this Winter, all my old love for him has revived, and my heart would once more greet him as of old. I sometimes quarrel with my friends on the surface, but never at the bottom. With yourself, oh! friend above all friends! I am a perpetual love.

Yours, THEODORE.

[Marked "D, 87."]

Mr. Shearman—I now read a letter dating back to 1865, a letter of Mr. Tilton to Mrs. Tilton.

Mr. Beach—What date?

Mr. Shearman—January 13th, 1865. [Reading]:

WED ELL HOUSE, CLEVELAND, Jan. 13, 1865.

MY DARLING WIFE: I have omitted another day to write to you. No help for it. Forgive me.

Yesterday morning, still maintaining headquarters at Cincinnati, I was invited by Rev. Dr. Reed, Editor of *The Western Christian Advocate*, to cross the river to Covington, Kentucky, to visit the father and mother of Lieut. Gen. Grant. I was greatly interested in this visit. \* \* \* \*

#### SOME WORDS ABOUT GEN. GRANT EXCLUDED.

Here follows a long account of General Grant's private history.

Mr. Beach—Better read it.

Mr. Evarts—We do not desire to read it at present, and therefore omit it.

Mr. Beach—That is not permissible in this case.

Mr. Evarts—That is permissible both in this case and in every other case. It is considered in for anybody to read the rest, and to read it as our evidence.

Mr. Beach—Well, I maintain that it is not perfectly settled in this case, or any other case in regard to a letter.

Judge Neilson—The question has not been spoken to as to the effect of a letter. I think you could take time to read it, perhaps.

Mr. Evarts—There is no compulsion on the counsel at any stage of the case, to read any part of a letter that they do not consider pertinent to their case, and if the other side thinks any part of it pertinent to theirs they can read it as being the evidence of the other side and not their own. That I agree to.

Judge Neilson—That was the rule we applied to other papers. Still I think it would save time to read it, Mr. Shearman.

Mr. Evarts—What? By reading the whole? This is a matter that has nothing to do with any relations between those parties, a long affair about General Grant's father and mother.

Mr. Beach—I don't know what it is; they have read a portion in regard to General Grant.

Mr. Evarts—We say that we don't wish to read the rest.

Mr. Beach—I have heard you say that—

Mr. Evarts—And we don't propose to read it.

Mr. Beach—That I have understood before; that is what I was objecting to. [To Mr. Shearman]: Wait one moment; don't go on just yet.

Mr. Evarts—Look at the letter as long as you please.

Mr. Beach—I shall not be long about it. I don't know but it may bear on the Third Term, Sir.

[Letter submitted to Mr. Beach for inspection.]

Mr. Shearman [Reading]:

\* \* \* \* \*

The next time I go on a long journey I will take you along, if for no other reason than to do the mending!

This afternoon's train brought me to Cleveland—the most beautiful city of the West. I immediately searched out the Rev. Samuel Wolcott, who delivered to me your dear, kind letter of January 5, which is the latest I have received from you. I am hoping to get another to-morrow. Your letters are like wine to my thirst. On opening the envelope, I am always disappointed if the letter is not a long one. I am glad Mr. Beecher called on you. I will write to thank him for it. I have not had a line from him, but I have had two brief notes from Mr. Greeley.

My speech in Cleveland is to-morrow night—after which I shall spend Sunday here, and return by way of Pittsburgh, hoping to reach home by Wednesday or Thursday. But I may delay a day or two longer on the road if a good reason arises.

You say, I am glad you write you are homesick. I reply, I am glad you write the same. If God spares me to return, I am sure our loves will be nobler than ever. I feel myself spiritually profited by my experiences of travel. I have clung to you as with an anchor every day of my absence. The thought of your constant love fills me with tenderness and yearning. And the dear children grow dearer and dearer. Kiss them all for their father's sake. Remember me always in your prayers.

Dear, sweet pet, good night.

THEODORE.

[Marked "Exhibit D, 88."]

# MRS. TILTON'S LETTERS AGAIN.

Mr. Shearman—We now return to the letters of

Mrs. Tilton to her husband.

FRIDAY EVE., Jan. 25th, —.

There is no year given by Mrs. Tilton to the letter, but it is marked both in pencil and in ink in another hand, "1867."

Mr. Fullerton—January 25th?

Mr. Shearman—January 25th. Friday did come on January 27th, 1867. No doubt this is right. [Reading.]

FRIDAY EVE., Jan. 25th, 1867.

MY OWN DEAR HUSBAND:

Four letters from you reached me to-day, including one to Mrs. Desmond and Oliver's letter to you. I did not go to Mrs. D—'s wedding as it was celebrated at Mrs. Merriam's in Springfield. Mother went on and has not yet returned. I will forward your letter though not the kiss. I think in reference to Oliver's opinion of Mr. B— as his rewards were made to Mr. Bowen, and they are embittered toward one another, that what Mr. B— said of you may appear very different through the coloring that Mr. Bowen may give it. Oh, how my soul yearns over you two dear men! You, my beloved, are higher up than he; this I believe. Will you not join me in prayer that God would keep him as he is keeping us? Oh, let us pray for him! You are not willing to leave him to the evil influences which surround him. He is in a delusion with regard to himself, and pitifully mistaken in his opinion of you. I can never rest satisfied until you both see eye to eye, and love one another as you once did. This will not come to pass as quickly by estrangement. But with all the earnestness of my being, I commit you both to God's love. He has signally blessed you both, and he will keep his own beloved. Why I was so mysteriously brought in as actor in this friendship, I know not, yet no experience of all my life has made my soul ache so verily, as the apparent lack of Christian manliness in this beloved man. Mattie feels as I do. I saw her to-day. She said she read two letters from you to-day. I do love him very dearly, and I do love you supremely, utterly, believe it. Perhaps if I by God's grace keep myself white, I may bless you both. I am striving. God bless this trinity! I can nor will no denial take.

I will be more patient and forbearing toward Libby from henceforth. I pen you my vow. Hereafter I guard my temper. You shall have a soul-pure wife by and bye. I am ashamed that I am so often unattractive to the Great Lover of my soul. I am striving to make myself beautiful that He may admire me! You know full well how far short I come, but this is my aim. If He can only say my life is blameless, you and I will then be satisfied. Cheer up, my darling, the work is mighty to which you are called, and you are doing it nobly. I love you like Mrs. Browning loved. Don't you know it? Pray for me always. I pray for you, though I have such assurances of God's love and care for you, that you seem high up and safe. If I could sit in your lap, and look into your dear eyes now, I'm afraid 'twould be more than I could bear. At any rate I should have a good cry, that I am now going to have without you. It always baptizes me—to use your word. Carroll is with me in bed. Annie is at mother's. I have had only two or three guests with me all night since you've been gone. Angels guard all.

Good night.

YOUR OWN WIFE.

[Marked "Exhibit D, 89."]

WEDNESDAY MORN., March 4th, 1868.

Yes, darling, I know you want me! if ever I may serve you it is when overtaxed and weary. I am most grateful that *then* you turn to me. Oh, how almost *perfectly* could I minister this Winter, my heart glows so perpetually. I am conscious of great inward awakening toward you—if I live I shall teach my children to *begin* their loves where now I am. I cannot conceive of anything more delicious than a *life* consecrated to a faithful love. Oh, why did I sleep so long?

The check for Journey's bill has arrived, but no tidings from the Warren letter. It makes me very happy to pay this bill, which I will to-day. The procuring of my clothes has always been a great trouble to me.

Mattie took tea with me Monday night, and we went to the closing reading for the Winter of Prof. Raymond's course. He read the "Tempest" finely. She returned with me and staid all night.

Fanny Kemble is in N. Y. I should be *satisfied* could I go with *you* to hear her.

Bessie is improving, or rather *I am*.

No callers for some days. The weather is very cold; the deepest snow this Winter has fallen since Sunday.

Will you go to Marietta? I insist that I miss you more than you do me. I am alone a great deal, and choose it. But *soon* I shall see my beloved! I must now to my work. Adieu.

YOUR OWN DEAR WIFE.

[Marked "Exhibit D, 90."]

THURSDAY EVENING, January 13th, 1870.

MY DEAR HUSBAND:

You once said, and often acted, that I was always craving sentiment. It is, verily, true! I am what I am. Therefore, to such a nature as mine Jesus Christ, as he discovers himself to me, is unutterably precious. Let my tongue cleave to my mouth if I fail to bear testimony to His unchangeable love.

Your letter reached me yesterday. How it lightened my day like a glory. You are well beloved by *one human*, and therefore it is love struggling and unperfected. I do not, however, comfort myself in my humanity, rather whenever I am victor over it. Oh! how slow is the warfare. Yesterday Sophy went to Mrs. Ely's, and is there still. Parker Pillsbury and Susan Anthony took tea with me, and stayed all night. I have called for a meeting of the ex-committee that I may send Mattie to Washington in my stead. Mrs. Hooker has written me that Mrs. Stowe sailed to-day for Florida, and that she should like to take her place as guest at Senator Pomeroy's. I therefore wrote to the Senator if such a change would be agreeable. Sophy will go if Mattie goes. I wish the three ladies might be entertained under that hospitable roof.

To-day has been a quiet day. Mr. Beecher called. He is in fine spirits making calls. He devotes Wednesdays and Thurs-



days "till further notice;" has 300 to make; made twenty to-day; enjoys it immensely. Called on the Wheelock's to-day, and kissed them all round, Lizzy Wood included, he said [Laughter.] I told him that Alice had named her doll Rose Wentworth. Mrs. Beach and Emma called on mother to-day, greatly to mother's gratification, as she has had very few calls since her separation. Eva and Annie Tilton are getting up a surprise party for her next Tuesday night, and I have invited her old friends, including Mrs. Wheeler and Ira. Jo and Fanny are coming, and Dr. Talmadge.

I read the dear children your letter. Was glad you spoke to children last Sunday. The baby has recovered. Alice goes to school until 12 o'clock daily. Carroll is well, but Flory is still quite sick and low spirited; cries often. I still sleep on the lounge beside her. The diphtheria is a much to be dreaded disease; it goes hard with the darling, her tonsils being weak from a former attack. This ends another of my matter of fact epistles, but so endeth not the love of your darlings, wifey and four precious children.

[Marked "Ex. D, 91."]

Mr. Evarts—I will read a letter from Mr. Tilton to his wife, dated Nov. 3, 1868. [Reading:]

AT THE OFFICE, NOV. 3, 1868.

MY DEARY: Your kind and loving note falls so pleasantly on my spirits that I would immediately go home this afternoon were it not that I have engaged to go out this evening.

There is so much sunshine pouring into my little office at this moment that I think I never knew a brighter day in my life; and I hope that some of the light and warmth will steal into and remain within my cold and cruel heart.

It is the greatest regret of my life that I do not seem constituted so as to make you as happy as you deserve to be; but I have the best of intentions—and the worst of success.

The cause of so much trouble at home is my general anxiety about everything. Latterly I worry more or less concerning every matter which I touch. I have hardly ten minutes a day of uninterrupted free from care. This may seem an exaggerated statement; but it is the painful truth. I feel as if I were growing old before my time. Lights that used to burn within me have been quenched. Hopes are faded; ambition is killed; life seems a failure.

As I cannot bear to see any expression of pain, or sorrow, or regret, on your face, I cannot bring myself to speak to you familiarly on any subject connected with any of our sorrows—not even Paul, our chief. I am literally *tormented* at having no grave for his crumbling clay. Every allusion to the subject has been a pang through my heart.

Then, too, all my religious doubts and difficulties have been, and are, and I fear must be, shut within myself, because I cannot open my mouth to you concerning them without giving you a wound. You are the finest fibered soul that ever was put into a body; you jar at my touch, and I am apt to touch you too rudely.

As for my own character, I saw, at the time of Paul's death, what it was to be a man, and how far short of it I am myself; and I have ever since been utterly overwhelmed with my own worthlessness, selfishness, degradation and wickedness. At some time I expect to recover from this slough of despond, but not now; I must remain longer in suffering before I can emerge into peace. I have been overthrown, and, before I rise, I must be made to feel, like Antæus, that strength comes from touching the ground.

But the chief of all my miseries is this: that I impart them to others. Let me say, with the utmost fervor of protestation, that neither you, nor the children, nor the house, nor the servant, nor anything that is within our gates—not one alone—nor all combined—no, none of these persons or things *has the slightest originating share in my troubles*. Those troubles (such as they are) are of my own making. Would to God they

were also of my own enduring! But they have to be inflicted upon others—upon yourself and the children. It is this fact that doubles my affliction.

But your kind and tender words, penciled in the studio this morning, were very precious to me—sweeter than honey in the honeycomb. I write this letter on purpose to thank you for them. God bless you evermore.

Lovingly yours,

THEODORE.

[Marked "Exhibit D, 92."]

Mr. Evarts—Mr. Tilton, this was written at your office in New-York, I suppose? A. Will you let me see it, Sir [looking at the letter]; yes, Sir.

Q. And the studio referred to in the last paragraph. "Your kind and tender words penciled in the studio this morning;" is that Mr. Paige's studio? A. I presume, Sir, it is Mr. Paige's studio where she was sitting for her portrait.

Q. Have you the note to which this letter refers? A. I think probably it is among the papers.

Mr. Evarts—[To plaintiff's counsel.] I should like that note.

The Witness—I do not recall it at present.

Mr. Morris—I have never seen such a note.

Mr. Beach—November 3, 1868?

#### ANOTHER BATCH OF LETTERS TO BE PRODUCED.

Mr. Evarts—It would be on that date, probably.

Now, if your Honor please, there are three letters of Mrs. Tilton's that we desire to have the first thing on Monday morning, if our friends can find them in the interval—January 31, 1868.

Mr. Morris—Just hand us a list.

Mr. Evarts—Well, I am giving them to you now. January 31 1868; March 6, 1869; August 18, without a date, but I suppose about 1869, though it is not printed with the date of that year, but it is printed among the letters of 1869, and is found at the foot of the page on which the letter of August 3, 1869, which has been produced and been given in evidence, is found. The letters of Mr. Tilton I will give you next. Letter of October 25, 1865; of December 2, 1866; February 14, 1867; January 15, 1869; August 23, 1869, and July 31, 1895. That will probably conclude the exhibit of letters.

Mr. Morris—Mr. Shearman, you have some letters that I have used in evidence; will you be kind enough to return us those? There is quite a large number that have not been read in evidence.

Mr. Evarts—I have handed back several.

Mr. Morris—Yes; but only a small portion of them.

Mr. Porter—I handed to Mr. Evarts all that I had except those that were put in evidence.

Mr. Evarts—There may be some by accident. I guess you will find them.

Mr. Porter—You handed me some, and I handed them to Mr. Evarts and Mr. Evarts handed them back, all except those that were read.

Mr. Evarts—Some of them we did put in evidence.

Mr. Morris—I want those that have not been read in evidence.

Mr. Evarts—Exactly; but we have given them back.

Mr. Morris—I think, if you look, you will find that you have not.

Mr. Evarts—We will look for them.

Mr. Morris—Those that have been read in evidence are marked.

Mr. Evarts—If we find them they will be handed to you, without doubt.

Mr. Shearman—We read all that are on our list.

Mr. Morris—That is not what I refer to. If you will just take the exhibits that have been read, they are marked, and you have some letters that have not been read in evidence.

Mr. Porter—They are those that I handed to Mr. Evarts, and which Mr. Evarts handed back.

Mr. Evarts—It may be that some letters that you handed to Judge Porter have not been handed back to you; so we will look for them and find them.

Mr. Morris—It would not take but a moment, because the exhibits are marked.

Mr. Porter—The gentleman does not seem to understand me. Mr. Shearman was engaged in reading at the time he handed me a package of letters. I handed them over to Mr. Evarts for examination. Two of them we have selected out and have since given in evidence; the rest were handed over by Mr. Evarts to them.

Mr. Morris—My impression is that you are mistaken, Judge Porter.

Mr. Porter—We cannot be, for we have not been out of this room.

Mr. Evarts—It may be some have got in among the exhibits. We will look for them now. It has reached the hour of adjournment, your Honor.

Judge Neilson—Gentlemen, we separate now, with the admonition you have heretofore heard in respect to the case, and your duty in regard to it, which I need not repeat. I trust it is all fresh in your minds. As the learned counsel cannot attend to-morrow, we separate now until Monday morning at 11 o'clock, at which time you will please attend.

Mr. Mallison (Clerk)—The Court stands adjourned till Monday morning at 11 o'clock.

## TWENTY-FIRST DAY'S PROCEEDINGS.

### MR. TILTON CLOSELY QUESTIONED.

MR. BOWEN'S BUSINESS RELATIONS WITH THE PLAINTIFF—THE EFFECT EXPECTED FROM THE LETTER OF DEMAND—OLIVER JOHNSON'S CONNECTION WITH THE CASE.

Mr. Tilton's sixth day in the witness-chair was one of the most trying ones for him of the examination. The first hour was devoted to gathering and reading the last scraps of the correspondence between Mr. Tilton and his wife previous to 1870. These letters, like the others before read, were mainly in regard to personal and family affairs, Mrs. Tilton's writing being always hopeful; her husband's generally desponding. In the first letter which was read,

the plaintiff discussed the career and character of Jesus Christ. Nearly all of his letters, in fact, contain some reference to religious subjects. In one epistle, written while lecturing in the West, Mr. Tilton deploras his disappointment in Mr. Beecher, and makes this resolve: "Henceforth I take no pattern after public men—great men—famous men."

After the reading of the letters, Mr. Evarts resumed the questioning by inquiring regarding the connection of the witness with Oliver Johnson. Mr. Tilton described Mr. Johnson as "an old gentleman living in New-York." This part of the examination led to a very sharp encounter between Mr. Evarts and the witness. Mr. Evarts seemed curt, as if intending to repel any familiarity on the part of the witness, while Mr. Tilton appeared inclined to argue questions with his examiner. Mr. Tilton's career on *The Independent* was next reviewed, Mr. Evarts questioning the witness as to whether the circulation of that paper had increased during his editorship of it, but he would only testify to what Mr. Bowen had told him. After this the cross-examination proceeded for a short time in a more pleasant tone. The relations between Mr. Tilton and Mr. Bowen were thoroughly sifted, the interview between the two men on Dec. 26, 1870, being again reviewed. The scandals circulated about Mr. Tilton, which were the subject of that meeting, were inquired about, Mr. Tilton denouncing all of them as lies.

After recess the circumstances of the writing of the letter demanding Mr. Beecher's retirement from his pulpit and from Brooklyn, were related. Mr. Tilton said that he believed then that Mr. Beecher would be driven from Brooklyn, adding "as he will be." There was a very amusing descent from a high pitch to absurdity when the witness was under questions about the angry interview between Mr. Bowen and Mr. Tilton on the day subsequent to the sending of the letter of demand. Mr. Evarts became more vehement than he had been before since the beginning of the cross-examination, and, advancing toward the witness, and shaking his long finger toward him, he asked in harsh voice: "Did you at your house that day, your first visit to it after this interview with Bowen, say to the nurse and others there, others than your wife, that you were ruined?" "No!" replied Mr. Tilton, firmly; and then, soon after, he asked, "Who was the nurse, Mr. Evarts?"

The witness was obliged to again repeat the names of the persons whom he had informed of Mr. Beecher's alleged impurities, before they became a



matter of general circulation. During the examination on this point, all the pleasant humor which had been shown before seemed to have suddenly gone out.

Mr. Evarts made an exceedingly searching inquiry regarding the so-called confession of Mrs. Tilton, and the copy of it made by Mr. Tilton, both of which, the latter says, were destroyed—the first by his wife, the copy by himself. No question touching this topic was left unasked, and the witness positively asserted that the original “confession” and its copy were destroyed. The conversation between Mr. Beecher and Mr. Tilton on the night that the former first saw Mrs. Tilton’s “confession” was referred to, and Mr. Evarts was questioning the witness regarding his wife’s health at that time when the hour of adjournment arrived.

Mr. Tilton appears to be somewhat captious at times, as when Mr. Evarts asked him if he was “sure,” etc., and he answered that he was “certain,” etc., following his reply with an explanation of the difference between the meaning of the two words. If these criticisms annoyed Mr. Evarts, his conduct did not indicate it. At other times Mr. Tilton’s exactness was amusing, and caused Judge Neilson more severely to admonish the audience than he has had occasion to do for several days.

## THE PROCEEDINGS—VERBATIM.

### STILL ANOTHER FLOOD OF LETTERS.

The Court met at 11 a. m., pursuant to adjournment.

Theodore Tilton recalled. Cross-examination continued.

Mr. Evarts—Our learned friends have produced us, I think, all the letters we have asked for, excepting one that we can read from the book, they say, and which they do not find, but one of them is somewhat imperfect. First a letter of Mr. Tilton to his wife. [Reading]:

MR. TILTON SPECULATES ON POSSIBILITIES IN THE LIFE OF JESUS.

OSKOSH, WIS., Feb. 14, 1867.

MY DEAR ORTHODOX WIFE: I have been speculating considerably lately on the character and career of Jesus, and I wonder whether you will be shocked when I mention one of my meditations. It is this: How would He have appeared in the character of a married man? Certainly, even to your reverential and adoring view of Him as “God manifested in the flesh,” there ought to be nothing profane in the supposition. If He consented to be born of a woman, why might He not have consented to be married to a woman? And, if He was the son of an earthly parent, why might He not have been the Father of a mortal child? He loved some of His disciples better than others, as, for instance, John. He undoubtedly loved some few women devotedly, perhaps passionately. Now, why might He not have loved one, chief and chosen among those women, on whom He might have poured the whole fullness of His heart, and on whose finger He might have set a marriage ring, making

her, indeed, like the Church, the “Bride of Christ?” I confess that if a new historic investigation should reveal the proof that Jesus was a married man, instead of an unmated lover of all the world, I would see an additional glory in the most wonderful of all historic characters. Nor do I know of any evidence to show that He was never married.

If either Mary or Martha, or any other saintly woman, had been His wife the fact would probably have been mentioned, and yet what would we have known of His friend Peter’s wife except for the fact that her mother was once sick of a fever? Men’s wives are not necessarily known to history. Of course, the probability is that Jesus was never married; yet this is by no means a certainty. And as there remains a possibility that he was, it is a pleasing reflection for me that, while he was living in Capernaum, in the house of Peter (one of His disciples), He might there have enjoyed also the still sweeter companionship of a wife of His own. I know that even Renan says, “Jesus never married.” Even admitting the fact, however, this does not deny the propriety of His marrying, if he had chosen to marry.

But, if Jesus had taken a wife and fathered a family, I believe that this fact would have so completely humanized Him in the eyes of all the world that He never would have been regarded as God, or the Only-Begotten Son of God. And yet, if, as the son of Mary, He had become the husband of a Galilean girl, and these twain had dwelt in a cottage by the Lake of Genesareth, and unto them had been born children like those of whom He said, “Suffer them to come unto me,” let me inquire whether or not you would love the character of Jesus any less than you love it now? Answer. Your Heterodox husband,

THEODORE TILTON.

[Marked “Exhibit D, 93.”]

MR. TILTON LAMENTS PERSONAL AND FAMILY EXTRAVAGANCES.

Mr. Evarts—I read a letter of Mr. Tilton to his wife:

AKRON, O., Jan. 15, 1869.

MY DEAR WIFE: Ever since last October I have been lecturing every week,—sometimes every night, and the proceeds have all been swallowed up in my extravagant debts. If this spendthrift tendency of mine is ever to be curbed it must be by your helpful criticism of it—not by a parallel liberality of outlay by yourself. I am putting myself daily to as much fatigue as human nature can endure, in order, if possible, to clear off my obligations to my creditors, and to keep afterwards abreast with the world. Your letter, a few days ago, stating that you could not live on your salary, made me sick at heart, and temporarily I felt like giving up my journey and going home. To-day you send me a bill of \$58 for Cad’s clothes—an amount which I regard as so great for a family of our moderate resources as to be almost as wicked as my own outlays for pictures. In all the three weeks of my last absence I have not made, above expenses, \$400. Not one penny of all my lecture earnings for years has ever yet gone into a bank. I look upon our money-spending tendencies as cruelly wrong. At this moment I am well-nigh broken down in voice, and know not how I shall get through with to-night’s lecture. Am I wrong when I say that I cannot look with equanimity on squandering so much money in fine dresses for the children? My heart suffers a pang in saying this, but I cannot help saying it. We must either sell our establishment in Brooklyn or else manage it on a less expensive scale. I have made a vow to buy not another picture, and not another unnecessary article, during the present year. It is with something like a shudder that I look forward to the prolonged slavery of public lecturing every Winter, and if the proceeds are to be freely thrown away by both of us I may as well stop it now. I have suffered for ten days past an agony of remorse at the fruitless exertions I have made by three years of speaking—fruitless, because their harvest has been unprofitably spent. Judging by all the families I visit, I know that we are literally throwing away our inheritance. At last I am aroused; and I appeal to you to put a peremptory check upon any and every

unnecessary expenditure which *you see me make*. Dress the children in calico for a year, and let me get out of my misery.

Yours in dust and ashes,  
[Marked "Exhibit D, 94."]

THEODORE TILTON.

MRS. TILTON GRATEFUL FOR CONFIDENCE.

Mr. EVARTS—I now read a letter from Mrs. Tilton to her husband :

FRIDAY, Jan. 31st, 1868—11 o'clock p. m.

MY DEAR HUSBAND: I have just returned from Mattie's, and saw your bust; loved it, and could not bear to leave that precious head behind me. I felt a sense of cruelty. Oh, Theodore, darling, I am haunted night and day by the remorse of knowing that because of my harshness and indifference to you you were driven to despair—perhaps sin, and these last years of unhappiness. I sometimes feel it to be the unpardonable sin. God cannot forgive me. But if you only may be restored to your former loveliness, I shall be content to live my life in penance, yea, in disgrace. I am the chief of sinners!! I understand perfectly how you have felt. I carry in my soul this burden black of sin, yet appear to my children and friends calm and happy. "Woe unto you, whited sepulcher," I hear perpetually. I will carry these agonies gladly, for I know a life of happiness awaits you.

To return to the bust. The spirit of your face is caught in its earnestness; the eyes do not quite suit me, but this must ever be the fault of statues. I received this morning your letter from Syracuse inclosing check for \$100. It makes me *very happy* that you give me an exact statement of your affairs. I appreciate the confidence, after all you have suffered through me, to the depths of my soul, and shall try to follow your wish in *every particular*, and tho' I'm a poor housekeeper and provider, I never felt so great an impulse to use my judgment and all my faculties to help you. If the past were not ever present, I believe I might yet bless you. You are the only human being I have harmed! Oh! wretched woman that I am!

I learned from Mattie that Mrs. Gibson was left entirely destitute, Mr. G—having even sold his life insurance a few weeks before his death. Mrs. Gibson and all the family are visiting at Mr. Beecher's since the funeral. I have not seen him since you left, nor do not wish to unless he believes in and loves you perfectly.

Darling, we must both cultivate our self-respect by being what we seem—then will be fulfilled my ideal marriage—to you and you only a wife—but contact of the body with no other—while then, a pure friendship with *many* may be enjoyed, ennobling us. Let us have not even a shadow of doubt of each other—tho' all the world are weak yet will *we* be strong.

God accept and bless us *both*.

Now are we *one*.

By bye,

Faithfully yours,

Be not offended that I iterate and reiterate my love. *I must*, but destroy all my letters.

[This letter was marked Exhibit D, 95.]

Mr. EVARTS—I now read a letter from Mr. Tilton to his wife, dated Dec. 2d, '66 in pencil. [To witness.] Mr. Tilton, here is a memorandum in pencil, as of the year, which does not form part of the original. Is that your memorandum? A. I cannot say it is mine, but it is probably mine. It is marked "'66" in the same manner in which other letters have been marked; that is to say, on referring to the almanac I saw that Sunday night fell on Dec. 2d, in the year 1866.

Q. And that is your mark as the year this letter was written? A. I presume it is.

MR. TILTON TIRED OF PUBLIC LIFE AND PUBLIC CHARACTERS.

Mr. EVARTS—[Reading:]

SUNDAY NIGHT, AKRON, OHIO, }  
December 2d, '66. }

MY DARLING:

I have just been moved to write a long letter to Mrs. Bradshaw about May. It is chiefly about having a purpose in life, and how to carry it out. Of late, I have been thinking much of my own life. You know that I don't attach as much importance as many do to certain churchly ideas of the Christian life. It seems to me that the truest method, and the surest, of developing a Christian character, is never to swerve from one's own inward ideal of right, whether or not this ideal be in conformity with the prevailing conventional notions of good men, or of the best of men. I have been looking back upon my ten years of public life, and judging of its motives. Looking back thus, I can see that I have been always earnest and straight-forward, but always too much in the interest of myself, and too little willing to be counted as nothing in comparison with the work which I have been set, as an instrument, to perform. Lately I have been endeavoring to ascertain what are my earthly ambitions; to struggle with them and conquer them. I have no ambition to be rich—and never had; none to be in political office; none for social or fashionable pre-eminence; none, that I can detect, for oratorical distinction; and not a great deal for a literary reputation. My public notoriety occasionally flushes me with pleasure. But on the whole, I believe I can truthfully say that I have in great measure put aside the idols which I used to worship. I once believed, judging by my personal experience, that public life—particularly such a life as that of a young man prematurely famous—was bad for the character; crippling to the soul. I used to feel this at times in many keen self-reproaches. But when one has at first tasted the sweets of reputation, and at last of their insipidity, I think he gets a more sober, philosophical and just view of what is valuable, and what is valueless in life, than in almost any other way. As a consequence, many of the men of great fame whom I intimately know, make no such ruling impression on my mind as many of my private friends do. But if I had no reputation myself, I should still be dazzled with theirs, as I was once dazzled years ago. For instance, I like Mr. Beecher in many respects as well as I ever did. But he has ceased to be my soul's prop—ceased to inspire me to my best life. I believe he is not as morally great as he once was. I do not now refer at all to his political views. His political views have made no change in my feelings toward him as a friend. But there was an older virtue which has since gone out of him—an influence which used to brighten my life when I came under its ray; an influence, however, which became gradually quenched like a vanishing sunbeam. Henceforth I take no patterns after public men—great men—famous men. They are not so good as my wife and children. Half an hour's talk with Mrs. Bradshaw makes me a better man than a half dozen sermons could do. I have had a sweet Sabbath day—one that has baptized my soul. I spoke to a thousand children this afternoon, and I have been in a glow ever since. This will account for the fact that I have written two such sermonic letters. But now I send, good-night.

Forever yours,

THEODORE.

MRS. TILTON GLAD TO BE RELIEVED OF BESSIE TURNER.

[This letter was marked "Exhibit D, 96."]

Mr. SHEARMAN—I read a letter from Mrs. Tilton :

SATURDAY, A.M., Mar. 6, 1869.

MY DARLING: I have looked with great annoyance and pain on the map to learn your whereabouts, and realized the immense labors you were going through before your letter just now rec'd, desired me to do so. Don't make a Western tour again; with your salary and the engagements near home, we will try to pay off our debt and educate our children. Besides, the little new baby will reward us both for our labors. I feel sure. The snow is falling fast; how full of happiness I should be, could I comfort you to-day!



Kitty Belcher is visiting Flory, and they are making caramels in the kitchen.

The note from Philadelphia is very curious. Bessie is all right. She comes to Sunday-school every Sunday, and visits me once a fortnight: is boarding at the Home, and has fallen in with some rich families in Fifth-ave., where she has found enough to do sewing by the day, and they pay her amply. She has been to several concerts in New York, and received a very gay valentine, and on the whole appears quite contented. She does all the playing for the Institution, every evening, for the girls to dance. Has had but one sick headache. I feel thankful daily that I am relieved of her care.

Do you not know when I may look for you? I have come to the end of my printed list; now only the few changed appointments remain.

Mother's affairs stand at *statu quo*. She sleeps well. This change I never expected. All under my roof seems marvelous to me.

That luxurious ride in the cars was followed by weariness, vexation and disappointment. How very, very often has it been thus with us in our life.

And I am impotent to help you. Farewell.

Your dear WIFE.

I mailed a hasty line to you last night to Kokomo—so did Frank Moulton. I only now discovered the mistake. [This letter was marked "Exhibit D 97."]

Mr. Shearman then asked for a letter of August 28, 1869, from Mr. Tilton to Mrs. Tilton.

Mr. Morris—You have read that letter.

Mr. Shearman—No; we have read everything we could get.

Mr. Fullerton—There is no objection to their reading it again if they wish to.

Mr. Shearman—That was another letter, New-York, Aug. 28. This letter I want is dated, "Saturday Night, Brooklyn, Aug. 28, 1869."

Mr. Morris—We have no such letter as that.

Mr. Shearman—Oh, yes; there is such a letter.

Mr. Fullerton [searching in his side pocket]—The reason they could not find it, I had it. [Produces letter.]

MR. TILTON UNFASTENS THE FLOODGATES OF HIS LOVE.

Mr. Evarts—I will now read this letter:

SATURDAY NIGHT. }  
BROOKLYN, Aug. 28, 1869. }

MY DEAR WIFE: I find myself alone, but hardly lonesome, wearier but not sleepy, restless but not without peace of soul to-night; and so I turn my thoughts to you and the children in your mountain nest.

My letters of late have been so hurried and barren that I have sometimes wished I had not sent such and such a one. I know your sensitiveness to my words, and I have been chiding myself for allowing you to see by pen and ink that I have been greatly driven day and night, for two or three weeks past, to the apparent neglect of you and your cares. But to-night, although my table lies covered with unfinished work, I end it with abruptness for the sake of expressing to you some thoughts which have lately been occupying my mind, or rather some feelings which have been stirring my heart, in reference to our married life.

I will confess frankly that I have passed the most wretched Summer of all my life, and no one knows it but myself—indeed, no one who has been with me has seen me other than outwardly gay and cheerful. All the exhibitions which I have made of myself to my friends have been of unusual hilarity. This has been the utmost shallowness of superficiality. One thing I have enjoyed, that is, my work. It has been unusually heavy, and therefore unusually beneficent. But, leaving my work aside, all my other pleasures have been pains. For two or

three weeks I resolutely repressed all allusions to my feelings, when writing to you—not wishing to mar your vacation. But as the time of your home-coming cannot be very far off, I open the floodgates to-night. I will therefore say that I have missed you for the past month with something of the same awfulness and heart-break as if I had lost you forever by death. The idea has haunted me that perhaps I should never see you again, and this has prostrated my spirit to an agonizing humility, and led me into ten thousand self-reproaches for the past. Of course I do not lay any stress on any superstition. I expect to see you again, and hope to do so as soon as you think advisable for the children to return. But I have discovered, by searching the depths of my soul, that I love you more than any human ought to love another. I have seen some noble women this Summer—whom I admire, and whom, in a certain way, I love. All my life I have known something of the nature and experience of true friendship. From my early years I have loved and loved you. But all the past experiences of my heart's affections have been as nothing compared with the unusual and solemn sense which I have had during all the hilarities of this Newport week, that the only human being who touches my highest nature is yourself. This being the case, I am filled with distress to think that I must keep you uninformed, for the sake of your own tranquillity, of many of my thoughts, and of some of my conduct. I would to God I were a man worthy of your goodness, your self-denial, and your singleness of heart. Occasionally, in some supreme hour, I am your fit mate; but at all other times you are high above me. But if you could know the inward reverence which I have borne toward you for many days past, even while appearing to be absorbed in the companionship of other ladies, and particularly at Newport, I am sure you would almost dread to be so much loved by any human (and, therefore, infirm and wayward) creature like myself. I have several times tried to keep myself from writing you any such letter as this, because it is unlike most of my past correspondence. It is my request that no other eye shall ever see it except your own. Indeed, after this letter is in the mail, I shall probably grieve to think I wrote it. But, on the other hand, I shall never feel content until I have in some measure confessed to you that, all Summer long, I have trembled at the thought that you are almost as much to me as God himself, and yet that I am constantly treating you as ungratefully as I treat Him.

One thing more, but I do not urge it, or even request it. I only state it. If you could come here and stay with me two or three days in this house, with no other person to intrude upon our communion, I would bless you for it as long as I live. I want to show you my heart, and its too great load.

Yours in frankness, THEODORE.

During the reading of this letter Mr. Porter handed a printed edition of the letters to Mr. Evarts, telling him he would find it easier to read.

Mr. Evarts—There are some words in the original which appear to be omitted in the printed copy.

Mr. Evarts here puzzled over a word, which he read "codicil," and Mr. Tilton said: Bring it to me, Mr. Evarts, and I will interpret it.

Mr. Evarts—Oh, the language is clear enough; it is only the writing I find difficulty with.

Mr. Tilton—It is not a codicil; it is my will. [Laughter.]

[This letter was marked, "Exhibit D 98."]

MORE ABOUT THE PUBLICATION OF THE LETTERS.

Mr. Evarts—Mr. Tilton, you have said something about the publication of these letters having been arranged to

be made at a remote point, rather than here? A. Yes, Sir.

Q. Do you remember making an application to one of the leading papers in this city to republish them, here in New-York, from the Chicago papers? A. No, Sir; I made no such application. One of the leading daily newspapers of New-York made such an application to me for permission to print them, which I refused.

Q. What paper was that? A. THE NEW-YORK TRIBUNE.

Q. Do you remember making an application to *The Herald*? No, Sir; I remember *The Herald* making an application to me for my sworn statement; that also I refused.

Mr. Evarts—Yes, well, I am not talking about that, and I ask if your Honor please to have that struck out.

Judge Neilson—Yes, Sir; strike it out. It was not called for by your question.

Q. And you are quite sure that you did not make any application or suggestion to a New-York paper to republish from the Chicago paper these letters? A. To republish?

Q. Yes. A. Oh, that is quite another matter; I trusted—

Q. That was my first question, I think. A. O! I didn't understand you, Sir. After the letters were published in Chicago it was my wish, or rather it was Judge Morris's wish, that they might be republished here, and when Mr. La Fontaine, then the managing editor or city editor of *The Herald*, told me that he was going to republish part, but not the whole, he requested me to use my judgment in the selection of such parts as I would prefer to have printed. I made that selection; I think about one-half of the letters were republished in *The New-York Herald*, the selection being made by myself in connection with Gen. Pryor; Gen. Pryor and I went over to *The Herald* office one night and did it.

#### MR. TILTON'S RELATIONS WITH OLIVER JOHNSON.

Q. Who is Oliver Johnson, and what relations had he to you in business, or in personal intimacy or family friendship? A. Well, Sir, that is a pretty long question, it will require a pretty long answer.

Q. Yes. A. Who is Oliver Johnson; I begin with that?

Q. Yes. A. Oliver Johnson is an old gentleman, living in New-York, who used to be editor of *The Anti-Slavery Standard*, who afterwards became my associate editor in *The Independent*, and whom I afterward put into *The Christian Union* to help Mr. Beecher carry his case, so that the public eye could not see it, and who is now on that paper.

Q. That is not my question? A. I thought you wanted to know his connection with this case.

Mr. Evarts—I ask to have that struck out, please. I have asked who Oliver Johnson was.

Judge Neilson—Yes.

Mr. Evarts—That is the head that he is now on, and argumentative observations about—

Judge Neilson—That last remark about getting him into *The Union* is not necessary. Strike that out.

Mr. Beach—It already appears in evidence.

Mr. Evarts—It does not appear as part of my evidence.

The Witness—Mr. Evarts, you will excuse me. I understood

your question to refer to Mr. Johnson in his connection with this case.

Mr. Evarts—I have not said a word about his connection with this case; not a word.

The Witness—Well, Sir, if you wish then to know who Mr. Johnson was I can answer that very accurately by giving you a written biography of him which he has prepared for me to use; to print after his death. [Laughter.]

Judge Neilson—That is not an answer to his question. You have already stated what he was.

Q. Is that the best answer you can give to my question who Oliver Johnson is? A. You asked me who he was, Sir, not who he is; "*Carthago fuit.*"

Q. Tell us, if you can, who Oliver Johnson is, what his relations were to you in business, what in personal intimacy and what acquaintance with your family—which is my original question? A. Well, Sir, didn't I answer it?

Mr. Evarts—Don't ask me whether you have answered it. Go on and answer it now. A. Well, I think I have answered it. I told you that so far as Mr. Johnson was related to me, he was my associate editor in *The Independent*. What else do you wish to know about him?

Q. I want to know your personal intimacy with him. A. For a number of years Mr. Johnson and I were very intimate.

Q. When did that intimacy begin? A. I think when I was about twenty-one or two years old.

Q. And have you been acquainted with him ever since? A. Yes, Sir.

Q. And are you acquainted with him now? A. I think not, Sir; I should not recognize him in the street if I met him; for that reason I should say I am not acquainted with him.

Q. You would know his person, wouldn't you? A. Oh, yes, Sir; that is all I should care to know. [Laughter.]

Q. Now, how long did the intimacy which began when you were twenty or twenty-one years old continue? A. Continued until after I put him in *The Christian Union*.

Q. Until you put him into *The Christian Union*? A. Yes, Sir.

Q. Which was about four years ago? A. No, Sir.

Q. Three years ago? A. That comes of the error of using the word "about." I recognize the correctness of your criticism the other day; it was about two years ago.

Q. About two years ago—well, you are now about thirty-nine; this was about two years ago—37—21—that would be sixteen years of intimate acquaintance you had with Mr. Johnson? A. Well, Sir, you are better in figures than I am. I will take your word for it.

Q. Now, Sir, what was Mr. Johnson's employment in connection with newspapers, and what your association with him during that period of time? A. When I first became acquainted with Mr. Johnson he was then the editor of *The Anti-Slavery Standard* in New-York; he afterward became my associate in the editorship of *The Independent*.

Q. From what date this latter fact? A. Well, Sir, I cannot give it to you exactly; I think Mr. Johnson was about seven years with me in *The Independent*; we retired about the same time; he lingered two or three weeks longer than I did, but we



practically retired at the same time; he went out because I did; that retirement was at the close of the year 1870. My impression is that he remained with me about seven years, though I won't be positive as to that.

Q. Now, part of that time you were assistant editor under Mr. Beecher, and part of that time you were editor-in-chief, were you not? Part of those seven years that you speak of you were editor of *The Independent* under Mr. — O! no; you date from 1863 when you commenced; you were editor-in-chief the whole of the seven years? A. Yes, Sir; Mr. Johnson was not in *The Independent* while Mr. Beecher was there.

Q. No; he began then with you? A. Yes, Sir.

Q. Began with you and left with you? A. Yes, Sir; he did not begin with me; I began many years earlier in *The Independent*.

Q. I mean began with your being editor-in-chief? A. I don't think that is true either; still it may be.

Q. You have already told us that you began as editor-in-chief after Mr. Beecher's return from Europe? Yes, Sir.

Q. Very well, that was in 1863? A. I think you are correct.

Q. Very well, Mr. Johnson came in in 1863 and went out— A. I don't say that he did.

Q. You said seven years? A. I said seven years, perhaps; I wish to be accurate.

Q. Well, as far as you recollect, Mr. Johnson came in with you, and went out with you? A. No, Sir; I don't recollect that at all. I had been fifteen years in *The Independent*. Mr. Johnson about seven years.

Q. Well, I mean came in with you when you became editor-in-chief, and went out when you left it? A. Well, that may possibly be so, but as I am under oath I will not swear to what I do not accurately know.

Q. Now, during that period, what degree of personal intimacy, outside of business relations, did you also have with him? A. Very great.

Q. And how frequent and how acceptable a visitor was he in your house? A. I always liked him, but Mrs. Tilton never did; never wished to have him come.

Q. Well, did he come? A. He came very frequently; yes, Sir.

Q. Very frequently, notwithstanding? A. Well, I say very frequently—no, not very frequently, for I was away lecturing most of the time, and he came occasionally. She thought he was a heretic in religion and did not wish me to bring him there.

Q. Now, when he left *The Independent*, at the same time that you did, what employment did he then go into? A. He became the editor of *THE WEEKLY TRIBUNE*, under Horace Greeley.

Q. And your friendship and intimacy continued with him during that time? A. Yes, Sir.

Q. And then, in 1872, about two years ago, you had some hand, as you have stated, in placing him in *The Christian Union*? A. Yes, Sir; I think it was about the beginning of 1873; that is my impression; I won't be accurate as to the date.

Q. Well, about two years ago—and has he remained there ever since? A. I don't know anything about that, Sir.

Q. Now, Sir, in these lecturing tours of yours that preceded

1870—that is, preceded the season of 1870 and 1871—take, for instance, the last two years 1868-'69 and 1869-'70, what was the aggregate of your receipts or emoluments from that source of income? A. You mean each season?

Q. Yes? A. Well, I don't know that I can answer from memory. Wasn't there some statement in one of the letters read this morning? My impression is, in the rough, that for a number of years in succession I received from my lectures about \$8,000 or \$9,000, from which my traveling expenses had to be deducted. I don't know the net increase.

Q. Well, it would leave \$7,000 or \$8,000 or something? A. I should think so; yes, Sir.

Q. Each year? A. Yes, Sir; I think so; about that.

#### THE INDEPENDENT UNDER MR. TILTON.

Q. Now, when you took possession of *The Independent* as editor-in-chief, and Mr. Beecher left it, what was its strength in circulation, and its credit and repute in the country? A. It had a very good circulation, and had a very fair repute, except in orthodox circles. Mr. Beecher had cast over it a reputation for here-y, and I had cast upon it a reputation for extreme radicalism in the anti-slavery movement. Still, as both those reputations were in my judgment good, I think I may say *The Independent* stood well.

Q. And can you give us about what its circulation was? A. I don't remember, Sir; that is Mr. Bowen's secret.

Q. You have some notion about it, haven't you—did you know at the time? A. I haven't any means of fixing the circulation of *The Independent*.

Q. Did you know at the time? A. I presume I did, from time to time.

Q. You have forgotten, have you? A. Forgotten, I think.

Q. Now, can you remember whether its circulation was increased under your administration? A. Yes, Sir.

Q. Wasn't it very largely increased? A. Mr. Bowen always said so; whether or not that was exactly true I don't know.

Q. What made you doubt?

Mr. Beach—He does not say that he doubted.

Mr. Evarts—He says he does not know whether it is true or not.

The Witness—Well, the publishers of newspapers always draw a long bow, Mr. Evarts, in making their prospectuses.

Mr. Evarts—Well, I don't know how that is; I have never published a newspaper.

The Witness—*The Independent* was always put—

Q. You were editor, and you must tell us, if you can, whether it did not rise very largely under your administration from the subscription list as it stood when Mr. Beecher left? A. Why, Sir, I think *The Independent*, for the last fifteen years, under Mr. Beecher, under Dr. Thompson, under myself, has had a steady growth, until the time when the anti-slavery movement was settled and the war was over. After that I don't know anything about it.

Q. Well, but you know it from the time of 1863 to 1870 while you were the principal editor of it, do you not? A. Yes, Sir.

Q. Well, now, that is the very period, and the only period I am asking you about. A. I remember this—this I have a dis-

inct recollection of, that just at the time of my retirement, either that week or the next, Mr. Bowen published in *The Independent* a highly flattering article concerning the prosperity of his paper, in which I remember he gave a long list of 10,500 post-offices to which it had gone; pointed to that fact as an instance of its unparalleled prosperity. I happen to remember that.

Q. What was its circulation when you left? A. That I do not know, Sir, except that it went, as I say, to 10,500 post-offices.

Q. Then you cannot tell us whether the paper had gained in strength and circulation under your administration or not? A. Yes, Sir; I know that it had; I know from constant proclamations which the publisher made year by year. He had a habit of occasionally putting before the reader the past history of the paper, comparing the receipts of the first six months of this year with the first six months of last year; and all these showings always made for the prosperity of *The Independent*. That journal was like a revolution which never went back; at least, according to the statements made by its publisher.

Q. And yet you cannot give us any notion of what its real strength and circulation was, or what you suppose it to be, at or about the time that you left it? A. I don't think I ever asked any question about it, Mr. Evarts. I was in the—

Q. And your own observation and interest as an editor of the paper did not lead you to have any knowledge on the subject? A. I unquestionably, from time to time, knew something about the circulation of the paper, but it was constantly fluctuating; and as I have been out of it for four years, I would not undertake to say what the circulation was. I have an indistinct recollection that when I first went into *The Independent*, Mr. Bowen then told me that the circulation was 17,000. I remember these figures; but what it was when I left I do not know. I suppose, perhaps, it was 50,000; 60,000, perhaps; I don't know; but that is a very rough guess, and I may be doing great injustice to much higher numbers.

Q. Well, that was something of a growth, then; from 17,000 to 50,000, wasn't it? A. Well, I think I might say so; yes, Sir; I agree with you in that.

Q. What was your contract or relation with *The Independent*, securing or providing for your position as editor? A. Well, Sir, I had a great many contracts with *The Independent*. I went into *The Independent* on a salary of \$700; I left it on a salary of \$7,000.

Q. No; as editor-in-chief—editor-in-chief, if you will listen to my questions—. A. I did not hear you say “editor-in-chief.”

Q. As editor, what was your contract with *The Independent*, in which your position and emoluments were provided for, from the time that you became the chief editor, in 1863? A. When I was editor-in-chief, in 1863, I do not remember what my salary was; it was not a very large one. From time to time during the following seven years my salary was increased; I do not remember the successive steps.

Q. Well, what had it come to be at or before December, 1870? A. At or before?

Q. Yes, Sir? A. It will require two answers, because at December, 1870, was one thing, and before that was another.

Q. Well, give us both answers if you please, then? A. In the early part of December, 1870, Mr.— Perhaps I ought to go back a step earlier than that. During most of the seven years of my chief-editorship of *The Independent* I had an arrangement with Mr. Bowen, by which I was permitted at the same time to lecture; my nights were free; the duties which my contracts compelled me to perform did not exceed the writing of the leading article every week, together with the general supervision of the paper, so that I was free to lecture; and during a number of years my income from my lecturing under that liberal arrangement of the publisher was about the same as my salary. Then, when I came home—

Q. Now, as my only object was to get at your salary, will you be so good as to state what it was? A. Well, Sir, I do not understand what you mean by getting at my salary.

Q. You have given me an answer that your salary was about what you got from your lectures? A. Yes, Sir.

Q. Now, will you tell me what your salary was; I care nothing about your lectures? A. Well, Sir, you differ in that respect from most of your fellow-citizens.

Q. I have got through with it; I have asked you about your lectures, and got through the \$7,000; now, will you tell me what your salary was? A. I will, if you will tell me at what time you want to know it.

Q. Before December, 1870? A. Well, Sir, my salary was at various points, fixed at various times before this.

Q. Give me all of them? A. Well, I told you a little while ago that I went into that paper on a salary of \$700; it was variously increased—.

Q. Now, as editor-in-chief, what were your respective salaries through that period of your editing? A. That I do not remember; you will have to refer to Mr. Bowen when you get him on the stand.

Q. Do you mean to say that you can give no information to us concerning your salary at different periods during the seven years of your editorship? A. Mr. Evarts, I mean to say exactly that I do not remember what my salary was in *The Independent* ten years ago; I remember that it was advanced by successive steps until it came to be, from \$700 a year to \$7,000 a year; that is what I remember.

Q. When did it come to be \$7,000 a year? A. I think in the year 1869, but I won't be certain of that.

Q. Now, what was it immediately before it was changed to \$7,000? A. That I don't remember; I think it was about \$5,000, together with some percentage of the profits, though I won't be certain of that.

Q. And how long did that arrangement continue—\$5,000 and a part of the profits? A. I don't know; it is so long since I have had any such income as that, that all is a dim haze and fog in my mind. It is a pleasure to me, Sir, to have you revive it, even in that unsubstantial way.

Mr. Evarts—Well, it would be a greater pleasure to me if I could revive it a little better.

The Witness—Well, Sir, if you could make it actual it would be a supreme delight. [Laughter.]



Mr. Evarts—I am afraid the community must do that for you. Judge Neilson—I really wish the audience would be quiet.

Q. Now, what was it at the stage before it was fixed at \$5,000 and a share of the profits? A. Well, Mr. Evarts, I have already told you I don't know; I can tell you again I don't know.

Q. Didn't it, when you became editor-in-chief, in 1863, then become \$5,000 and a share of the profits? A. That is my impression, but I will not be certain—you say in 1863, \$5,000 and a share of the profits.

Q. When you became editor-in-chief? A. No; I don't think at that time it was as large as that.

Q. What do you think it was at that time? A. I don't remember, Mr. Evarts; I will send over a respectful request to the office of *The Independent* that those figures may be given to you. I have no authority over there; I have not been in there for four years; but I have no doubt they would be happy to oblige you.

Mr. Evarts—It is not my affair, it is yours.

Mr. Fullerton—It is what you want to get.

Mr. Evarts—I want to get it from him. [To the witness.] Now, as I understand, at the beginning of December, 1870, your position, vocation and income was your position as a lecturer and a writer, and in your salary from *The Independent*? A. Excuse me, Sir; I don't understand your question.

Q. At the beginning of December, 1870, your position and vocation was in regard to employments and emoluments—your position as a lecturer, as an author, if you please, and as editor of *The Independent*, with your salary of \$7,000 a year? A. You are entirely wrong there, Mr. Evarts; at the beginning of 1870—

Q. December, 1870? A. At the beginning of December, 1870, I was not a lecturer; I was then editor of *The Independent* and editor also of *The Brooklyn Union*, having assumed those later functions to the exclusion of lecturing.

Q. Editor of *The Union*? A. Yes, Sir; I was going to tell you a little while ago when you interrupted me.

Q. Had you formally abandoned lecturing, do you mean? A. Why, certainly, I had to give them up when I became editor of *The Brooklyn Union*.

Q. So that 1869 and 1870 terminated your distinct vocation as a lecturer? A. Yes, Sir.

Q. Now when did you go into *The Brooklyn Union*? While you were editor of *The Independent* were you also editor of *The Brooklyn Union*? A. For a few months; yes, Sir.

Q. That was a secular paper, wasn't it? A. Yes, Sir; so was the other.

Q. *The Independent*? A. Yes, Sir.

Q. Now, when was the period of your editorship of *The Brooklyn Union*? A. It began May 1st, 1870, and ended December 31st, 1870, at 9 o'clock at night.

Q. What was your position of salary or compensation in *The Brooklyn Union*? A. I think, Sir, it was \$100 a week.

Q. Well, then, that was your position at the beginning of December, and your two salaries in these newspapers and such occasional employment as an author as might be? A. No, Sir; I hadn't any occasional employment as an author, because I bound myself not to be an author.

Q. Not to be an author? A. That is to say, I bound myself to limit my labors to those two papers, and not to write outside.

Q. Very well, then, at the beginning of December the salaries from those two newspapers were your whole income from your labors? A. Yes, Sir; except so far as I had some little money at interest.

Q. Well, that was not from your labors? A. Not from my labors? That is the only way I ever got it.

Judge Neilson—Your answer was correct as first given.

Q. Well, money from investments and not money earned—and that money at interest you have stated to us as being a balance that was, afterwards perhaps, deposited with Woodruff & Robinson? A. Yes, Sir; only a trifle.

#### MR. TILTON'S WEALTH.

Q. Now, you have spoken of your property as of this period of time, the first of January, 1871. What property had you that brought you any income or emolument? A. At that time?

Q. Yes, Sir; the first of January, 1871? A. I don't think any of it brought income.

Q. Except this money on deposit? A. That is all.

Q. That is all? A. That is my recollection at the present moment.

Q. Was not all the rest of it an occasion of expense and taxation, or otherwise? A. Yes, Sir.

Q. Now, you have assigned the sum of \$25,000 as the value of your house and furniture and books, and what you include in your domestic establishment, I suppose? A. Yes, Sir; pictures, musical instruments, and so on.

Q. How much of that \$25,000 do you attribute to the house, and how much to the furniture, pictures, &c.? A. I suppose my house to be worth—

Q. At that time? A. About \$17,500, I should say, house and lot.

Q. And there was a mortgage of \$7,500 on it? A. Yes, Sir.

Q. You have spoken of a share in *THE TRIBUNE* as composing part of your property? A. Yes, Sir; I also spoke of a part of my property held by my father under power of attorney. That was the part I alluded to.

Q. The nominal value of that was what? A. I was once offered for it \$10,250; I don't know what it is worth now.

Q. Had you, treating it as of that value, any interest in it, coming to yourself beyond what went to others. A. I never allowed myself to use a penny of it.

Q. I don't speak of that as using it? A. It always went to my parents.

Q. And you did get no income from it to yourself personally? A. Never a cent from the beginning.

Q. Now, you have spoken of some property at Llewellyn Park, I think? A. Yes Sir.

Q. Do you still own that? A. Yes, Sir.

Q. What value did you assign to that? A. Mr. Huscuil, of whom—

Q. We won't take the particulars, but what value did you assign to that in your estimate of your property in 1871?

A. About \$10,000 nominally. I was told, then, by Mr. Huscull it was worth \$15,000.

Q. You assigned \$10,000? A. Yes, Sir.

Q. Do you still own it? A. Yes, Sir.

Q. Was it under any mortgage at that time? A. Not a cent—free and clear.

Q. Do you understand what its value now is? A. It ought to be worth more, I should think.

Q. Do you know anything about it? A. No, Sir; very little.

Q. Is it now subject to a mortgage? A. No, Sir.

Q. Have you more than one piece of real estate over there in Lewllyn Park? A. No, Sir; three acres lying side by side like three eggs in a nest.

Q. Do you say that that is not subject to any mortgage? A. I don't think it is subject to any mortgage; I don't know. It was free and clear when I purchased it. I have never mortgaged it since.

Q. On what present basis do you put the idea that it has continued to be worth \$10,000? A. Well, I didn't want to say it was worth more than that, though, as I say, the original projector of the park told me never to sell it for less than \$15,000. I have always estimated it at about \$10,000.

Q. Have you offered it for sale for less than \$10,000? A. I have tried to get Mr. Moulton to buy it, but he preferred not to take property of mine, but to lend money—to crowd money upon me.

Q. Was any rate fixed at which you would part with it—that he might take it at? A. I told Mr. Moulton and Mr. Woodruff, either of them or both of them, that they might have it for whatever they in their business judgment considered it to be worth, but nothing came of the offer.

Q. Do you remember \$2,500 being an estimate that was put upon its value? A. What, Sir?

Q. Do you remember \$2,500 being an estimate that was put upon its value? A. No, Sir.

Q. At any time? A. No, Sir.

Q. Now, your Prospect Park lot; you put that at about \$1,000? A. Yes, Sir.

Q. What became of that? Have you got that still? A. What is that, Sir?

Q. Have you got that still? A. Yes, Sir; I have it still, unless some one has run off with it for taxes. I understand Mr. Shearman has been looking it up, and, perhaps, he can tell you better. They told me Mr. Shearman had been making some inquiries about it the other day. I understand it was sold for taxes—that there were \$8 taxes on it.

Q. Do you know it has been sold for taxes? A. I don't know. It is the first time I have thought of it in two or three years; I almost forgot it until it was revived the other day in Court here.

MR. TILTON'S LATER DEALINGS WITH MR. BOWEN.

Q. Now, Mr. Tilton, at some time in the month of December—I don't know that you have fixed the date—you ceased to be the editor of *The Independent*, and were put upon some other establishment with that paper, were you not? A. Yes, Sir; the other establishment was *The Brooklyn Union*.

Q. No; some other establishment with the *The Independent*, not that of editor. At some time in December you ceased to be editor of *The Independent*, and had your relations fixed with it upon some other basis? A. Yes, Sir; I thought you spoke of some other establishment.

Judge Neilson—In that department? A. Yes, Sir.

Mr. Evarts—Now, when was that done? A. I think the date of that settlement, or the assigning of the new contracts, what you call the new establishment—

Q. The new basis? A. Was December 20th or 21st or 22d; somewhere there, towards the latter part of that month.

Q. How long had that arrangement been in contemplation or negotiation before it was thus consummated? A. Well, Sir, a number of weeks.

Q. And how was it brought about—by you or Mr. Bowen's first moving in it? A. Well, Sir, do you wish me to narrate the steps that led to it?

Q. Briefly; I don't care about them; I have no interest in the details; I only want to know how the transaction went on. A. Mr. Bowen, somewhere in the month of November, I should say, of the year 1870—possibly a little earlier, possibly a little later—told me that, in consequence of various reasons pressing upon his own mind, he wanted to become editor-in-chief of *The Independent*. One of those reasons—

Mr. Evarts—Well, its no matter; I don't care about that.

Mr. Beach—Well, I don't know; you asked for the steps, and you will get them.

Mr. Evarts—I don't care what his reasons were.

Mr. Beach—What he stated is proper.

Mr. Evarts—He opened the matter to you, did he? A. Yes Sir.

Q. He opened the matter, and told you that? A. Yes, Sir.

Q. Very well. What was proposed, if anything, by him, as to the termination of your editorship, or any substitution or replacement of your employment in another form? A. When Mr. Bowen informed me that he wanted to become editor of *The Independent*, I instantly—not instantly, but a few days afterwards—resolved that I would no longer remain in *The Brooklyn Union*.

Q. That is, if you left *The Independent*? A. If I left *The Independent*. In other words, I wanted to be free to lecture; I didn't want to stay at home and bind myself to one paper. Mr. Bowen gave me a notice some time in November, or the early part of December of that year—notice, legal and proper under our then existing contracts, that he wanted to possess himself of his own paper at six months hence. That would have been about June, 1871. In pursuance of that notice, or in answer to that notice concerning *The Independent*, I told Mr. Bowen at the same time, namely, June, 1871, about six months hence I would yield up *The Brooklyn Union*.

Q. You each had that right toward the other under your contracts? A. Yes, Sir; under the then contracts.

Q. To terminate in six months? A. To terminate in six months. He did not wish me to give up *The Brooklyn Union*. I had then only been a few months connected with it, and he said it was prospering, and we had a number of friendly interviews, the purport of which was whether or not



we could come to some arrangement by which I could go on with *The Brooklyn Union*, and at the same time write for *The Independent*, so that from both newspapers my soon forthcoming and expected income would be as much as I could get from devoting my whole labor to the lecture and lyceum platform. As the result of that conference, or of those conferences, toward the end of September, about the 20th, as I say, somewhere there, I signed a contract with Mr. Bowen to become the editor of *The Union* for five years, at a salary of \$5,000 a year, with ten per cent of the profits.

Q. Have you those contracts? A. No, Sir.

Mr. Evarts—[To Mr. Morris.] Will you produce them?

Mr. Morris—They were left with the arbitrators; they were yielded up then.

The Witness—I signed, also, a contract the same evening to become special contributor to *The Independent* for a term of years, I have forgotten how many, for \$5,200 a year. That arrangement left Mr. Bowen free and clear to be editor of *The Independent* in chief, and me free and clear to be editor of *The Union* in chief.

Q. \$5,200, each of you? A. Yes, Sir, each of us.

Q. Each \$5,200? A. Yes, Sir; only that in case of *The Union* there was an addition to the \$5,200, namely, ten per cent of the profits of the establishment.

Q. Those contracts were given up at the time of the arbitration, were they? You say you have not got them now? A. Oh, they were given up; yes, Sir, canceled.

Q. Ended, as papers?

Mr. Beach—Not at the time of the arbitration; they were not canceled then.

Mr. Morris—They were canceled before the arbitration.

Mr. Evarts—The contracts were canceled, substituting contracts, but the papers themselves were given up, as I understand? A. I gave up the two papers themselves, having written the word "canceled" on them.

Q. At the time of the arbitration? A. I gave them to Mr. Bowen on the night he paid me the \$7,000.

Q. So you have not got them now? A. No, Sir.

Q. Now, what provision did these contracts contain in regard to the right on one side or the other to terminate them? A. Those contracts were written by me, and contained these provisions, namely: they might be terminated by the death of either party; they might be terminated by one party giving to the other six months' notice in advance, or they might be terminated at once by either party paying to the other a forfeit equal to one half year's income under the contracts.

Q. That is, either contract might be terminated in these ways? A. Yes, Sir.

Q. They were not tied together so that if one was terminated the other must be? A. No, Sir.

Q. Now, your valedictory was published, I think in *The Independent*—it has been stated the date, I believe. Do you remember the date of it? A. Yes, Sir.

Q. The 22d of December? A. December 22d, 1870.

Q. Now, when first did anything come up between you and Mr. Bowen in disturbance of, or in connection with the newly

made contracts? A. Nothing came up in connection with the newly made contracts until they were suddenly broken.

Q. When first did anything come up between you and Mr. Bowen in regard to your continuing in or ceasing to be in his employment under one or both of those contracts? A. Nothing, until the contracts were broken.

Mr. Beach—He asks the date.

The Witness—December 31st, 1870.

Mr. Evarts—How was that notified to you, this occurrence on the 31st of December? A. I think Mr. Bowen sent me round a little note.

Q. Have you that note? A. I have not been able to find it. I don't know whether that note was surrendered on the night of the tripartite covenant or not. My impression—I have some indistinct impression what that note was—that Mr. Bowen wanted back the paper which I had. I rather think I sent him back the note in connection with another note, but I won't be certain.

Q. You received it on the 31st of December? A. Yes, Sir; late in the evening. Perhaps I ought to mention that a few days before that I had a quarrelsome and angry interview with Mr. Bowen, in which he stated that if I did a certain thing he would terminate my relationship to him—a sort of a threat.

Q. Do you remember what the date of that was? A. Yes, Sir. No, I don't. It was either one or two days after December 26th; whether it was the 27th or the 28th I don't know.

Q. It was either the 27th or the 28th? A. I think so. At all events it was a day or two after that.

Q. That is your recollection; it was either the 27th or the 28th of December? A. Yes, Sir.

Q. Now, had you prior to this interview that you have now alluded to, and subsequent to the signing of your new-made contracts, any interview with Mr. Bowen concerning yourself as employed, or to continue to be employed in these newspapers? A. No, Sir; none whatever; I had an interview with Mr. Bowen on the morning of December 26th, but it was not in reference to any termination of any contract, or the reversal of any contract, or the shaping of any business arrangement; it was an interview of my own making.

Q. And didn't relate to any question of your personal acceptability or continuance there? A. No, Sir; Mr. Bowen had been talking—how people had been talking of me to Mr. Bowen, and I went down to see about it. I thought the frank way was to have an interview with him face to face.

Q. That was the 26th? A. Yes, Sir.

Q. Was that the first occasion of an interview after the signing of the contracts on the 20th? A. Was that the first interview I had with Mr. Bowen?

Q. Yes, Sir. A. The first one I remember. I don't know. I think quite likely I may have met him every day at the office.

Q. But no interview that had any significance or made any impression on you? A. Perhaps I ought to say this was Saturday evening.

MR. BOWEN'S SUDDEN COLDNESS TOWARDS MR. TILTON.

Q. Which would have been the 24th? A. Yes, Sir; which would have been the 24th. I think Mr. Johnson came around and took tea at my house, or, at all events, he came to my house and told me some one had been speaking evil of me to Mr. Bowen. Mr. Johnson was a warm personal friend of mine at the time. I asked him to go with me to Mr. Bowen's house. We went down early in the evening. Mr. Bowen came to the front door, I think, robed in his dressing-gown. I asked him what he had been hearing to my prejudice. He said, "Mr. Tilton, I have got all my new editors here now in a consultation, and I don't want to waste the time. Monday will be a holiday; wont you come around Monday morning and see me about it?" I said, "Yes, I will come around Monday morning." I asked Mr. Johnson to be there, and he was there.

Q. Then it was that Mr. Johnson had communicated to you that there would be some, or was some occasion, or there would be some propriety in your seeing Mr. Bowen, was it? A. No, Sir; Mr. Johnson told me that somebody had been speaking evil of me to Mr. Bowen. I said, "Very well; if that is the case I will go and see Mr. Bowen at his house," and asked Mr. Johnson to accompany me.

Q. Didn't Mr. Johnson suggest to you that you had better see Mr. Bowen about it? A. I think not; I think that was my own spontaneous impulse, that I asked Mr. Johnson to go with me; still he might have suggested it or acquiesced in it, as he was a discreet man.

Q. Didn't you understand Mr. Johnson had come over to see you that afternoon for the purpose of suggesting this? A. That I don't remember; still, it would have been just like him to do so.

Q. And in your interest, and as a friendly act? A. Yes, Sir.

Q. Now, about what time of day on Monday did you go to Mr. Bowen's? A. Oh, in the afternoon, sometime.

Q. And Mr. Johnson was with you during that whole interview? A. No, Sir; Mr. Johnson left before the interview was ended.

Q. Before it was ended? A. I think Mr. Johnson left in time to go over to New-York for the Christmas dinner. That is my impression.

Q. Then it was a long interview? A. I don't think it was very long.

Q. About how long? A. Well, I don't know; perhaps an hour and a half; perhaps longer; perhaps shorter.

A. And about how much of that time did Mr. Johnson remain? A. I could not say at this length of time.

Q. Perhaps you can tell us whether he was there during the greater part of the interview or not. Your saying leaving to go the dinner would not carry him over very early necessarily? A. My impression is that Mr. Johnson was there during the greater part of the interview, but not during the most important part of the interview.

Q. The most important part occurred after he left, you think? A. The most vivid parts: yes, Sir.

Q. You mean by that the most violent part? A. No; the most dramatic part.

Q. Now, who introduced that conversation, and how was it introduced? A. That morning?

Q. Yes. A. Oh! I don't remember that. Probably I did my self.

Q. You cannot tell us what you said to Mr. Bowen at the outset? A. No, Sir.

Q. Can you tell us what Mr. Bowen said to you at the outset? A. I think he said "Good morning."

Q. Can you tell us what Mr. Johnson said at the outset, if he said anything? A. No, Sir.

Q. You did have some conversation there, you three together, didn't you? A. Yes, Sir; I can tell you the substance of the conversation.

Q. Well, I will go on with my question. Now, did you or not inform Mr. Bowen that you would come there for the purpose of talking with him in regard to any stories that he had heard against you? A. I came there, Sir; I went there.

Q. Did you tell him that? A. I don't remember what I told him, but I quite likely told him just that for that was precisely the object of the interview.

Q. Did he then tell you what the stories were? A. No, Sir; he only told me there were stories, I pressed him to know what they were, but he would not tell me.

Q. Did he tell you what the nature of the stories was? A. He told me the stories were coming down on me like an avalanche. That I remember. Mr. Bowen is given to metaphors.

Q. And the nature? A. Threatening to sweep me away; stories of immoralities; stories of atrocity. He pictured the scenes very vividly.

Q. He did? A. Yes, Sir; but he would not tell me what they were, and he would not tell me who told him; but the substance of the interview I had with him was: "Mr. Bowen," I said "bring here to me in your presence everybody who has anything against me, and let us have it out face to face." He said, "That is fair." Then we went to another topic.

THE COMPOSITION OF MR. BOWEN'S AVALANCHE.

Q. Now, was not enough said there to make you understand that the stories related to immorality or profligacy with women? A. Stories, Sir, concerning my relations with women, and my drinking, and my brutality, and other things—a dreadful volume of it—all that went to make Mr. Bowen's avalanche. He told me that they came to him from all quarters of the world, all of a sudden. [Laughter.]

Q. And did you suggest in any way, or did it come to be a matter considered there, that if these stories were true you would have to leave his employment? A. No, Sir; he said if those stories were true I ought not to live a day longer, and I agreed with him in that sentiment. [Laughter.]

Judge Neil-on—Silence!

Q. Didn't you understand that the reason for your seeing Mr. Bowen, or your friend, Mr. John on, thinking it proper for you to see Mr. Bowen was that the stories that had been told him concerning you were such as would not tolerate your continuing in his employment? A. Not at all,



Sir; for Mr. Bowen had for fifteen years retailed himself just such stories concerning Mr. Beecher, and he had all that time been Mr. Beecher's chief pewholder, and Mr. Beecher had been his chief writer, and no such stories as those would have affected Mr. Bowen's regard for any man in his employ, whether as minister or editor. [Murmur in the audience.]

Q. Well, that is very bad for Mr. Bowen. He was above prejudices of that kind? A. Yes, Sir; entirely so. He abolished them all in the House of God. [A louder demonstration.]

Judge Neilson—Will the audience keep quiet? The business is interrupted by it.

Q. Now, were you aware at that time of the particulars of any injurious stories respecting yourself in this direction? A. No, Sir; the horror of the whole business was that it was all unknown; it was an avalanche coming upon me in the dark. I didn't know what it was, but I felt that my first duty as a gentleman was to go and see Mr. Bowen face to face, and, as I said before, the substance of the conversation was—

Q. No matter, that is not what I am now asking? A. To bring the accusers face to face. He said that was fair.

Q. That you have said already; but my question now is whether you were not yourself aware of the alleged circumstances of profligacy or immorality that were told to your prejudice. A. No, Sir; I did not know them until a few days afterwards, when Mr. Beecher certified that he had been my slanderer by taking it back in writing.

Q. And you had never heard any of these rumors concerning your conduct in this relation, prejudicial to you until Mr. Bowen told you that there was an avalanche upon you? A. In what relation?

Q. In these relations with women? A. No, Sir.

Q. You never heard of it? A. Just about that time, either before or after, there was a little evening newspaper in New York scandalized the community by saying that I was going to Europe to elope with a lady. [Laughter.] She had already gone several months before—a few months before. That is the only story I ever heard. That was a lie.

Q. Well, I am not speaking of the truth of the stories. I only want to know the state of your knowledge or mind at that time. Well, that you had been aware of, that imputation? A. I am not certain at this distance of time whether it occurred a little after or a little before.

Q. Well, isn't it very probable that it was before? A. I don't know, Sir.

Mr. Beach—Well, no matter about probabilities.

Mr. Evarts—Well, I ask, isn't it very probable that it was before? A. I don't know whether it was or not. There is no end to the probabilities of slander.

Q. I agree. A. Or the improbabilities.

Q. I only want to find the state of slander as it became known to you. A. Yes, Sir.

Q. Did this imputation, that you were aware of, contain any particulars as to person or circumstances? A. Yes, Sir; there was a bold and vulgar allusion to a very honored lady in this city.

Q. Very well; I didn't care to disturb the matter further than to know what you had heard concerning stories about yourself. A. Yes.

Q. Had you heard prior to this of stories to your prejudice connected with any transaction at Winsted, Connecticut? A. No, Sir; oh, yes, there had been a long time before, a story published to the effect that I had gone to Winsted with a lady not my wife—published some time during the political campaign.

Q. The political campaign of what year—1868? A. I don't remember. I was away off in the West, and Oliver Johnson sent that out to me. That was three or four years before that.

Q. That you had heard of them? A. That was an old tale; yes, Sir.

Q. Still, you had heard of it? A. Yes, Sir, years before.

Q. Now, had you heard of a story injurious to yourself in connection with any female at Faribault, in Minnesota? A. No, Sir; never have heard any such story until now. I didn't know that there was such a one.

Q. Well, that you had not heard of? A. No, Sir; what is the story?

Mr. Beach—Oh, no!

The Witness—Let us have it.

Mr. Beach—No; we are getting enough that is immaterial and incompetent now.

Mr. Evarts—I don't propagate the stories. I want to know the state of your knowledge; that is all. Do you mean to say, then, that this information from Mr. Bowen that there were current these stories to your prejudice was a surprise to you? A. Yes, Sir; I should think it would be to any man.

Q. Well, I don't know that. I am only asking of yourself. A. Well, I am only speaking for myself, Sir.

Q. It was a surprise to you that there should be such stories? A. Yes, Sir; it was an astonishment.

Q. Please look at this letter and at the date of it, and see if that is not a mistaken date. Shouldn't it be January, 1870? It is a common error, you know, of keeping the old year. I, of course, know nothing about it? A. You must let me read the letter.

Q. Oh, Yes; you may read the letter. [Handing witness the letter.] A. Now, Mr. Evarts, will you ask me again what question you desire to put?

Q. My only question was whether, upon looking at that date, you could say whether that was an erroneous date, that it was really 1870 instead of 1869, or not. You know it is a common error at the first days of a new year that one may make; whether there is anything about that letter that enables you to say whether that is the true date, 1869, or whether the true date is 1870? A. This is dated Tidioute, Pennsylvania, January 8, 1869. I was unquestionably lecturing there. I might refer to some little memorandum book of my lectures. I could not say from anything here.

Q. Well, you remember writing the letter, and the occasion of its being written, I suppose? A. Yes, Sir.

Q. But you cannot say now whether it was written in 1869? A. I think Mr. Johnson wanted me to write something; that is my impression.

Q. No matter. I only want to get at this date. You cannot give it, you say? A. No, Sir; but I can look on my memorandum book and see whether I was in Tidioute in 1869 or not.

Q. Of course, on its face, it would be perfectly regular that it should be 1869? A. Yes, Sir.

Mr. Evarts—I propose to read that. [Handing the paper to plaintiff's counsel.] Your Honor, it has reached the hour of adjournment.

The Court here took a recess until 2 p. m.

The Court met at 2 p. m., pursuant to adjournment.

Theodore Tilton was recalled and the cross-examination resumed.

Mr. Evarts—Have you been able to fix in any way whether that should be a date of 1870 or 1869? [Handing witness a letter.] A. I have not given any thought to the subject, Sir. I didn't go to my own house during the recess.

Mr. Evarts [to plaintiff's counsel]—Will you give us the 1869 and 1870 letters? [To the Witness]: Where is this place of Tidioute? Is that the proper pronunciation of it? A. No, Sir.

Q. How is it pronounced? A. Pronounced "Tidiute," I think.

Q. Where is it? A. In Pennsylvania somewhere. I lectured there once; that is all I know about the place.

Q. Somewhere in the oil-regions? A. I don't know about that now.

Q. Now, don't you remember whether you were there in January, 1869, or January, 1870? A. I don't remember anything more than the date of the letter, Sir.

Q. Won't you look at this collection of letters? [Handing witness the book.] There are some dates in January, 1869, about this time. A. Are these correctly printed?

Q. I suppose they are; I know nothing about them. We have assumed them to be so. A. Well, Sir, what do you wish me to do with these?

Q. Look over those of 1870 and see whether from those dates, supposing them to be correct, it would not be the year 1870 when you were in Tidioute on the 8th of January, and not 1869? A. I think that certain letters have been put in evidence already from Tidioute. I presume they have dates. I don't remember at this moment whether I lectured there more seasons than one or not.

Q. But you would not have been in Ohio on the 10th if you were in Tidioute on the 8th, would you? A. Well, Sir, I can't understand why.

Mr. Fullerton—It is very easy to travel that distance.

Mr. Evarts—Well, but he was on a lecturing tour. Both 1869-70 and 1868-69 you were on a regular lecture tour, were you not? A. How is that?

Q. Both the seasons of 1869-70 and of 1868-69 you were off on a lecture tour? A. Yes, I think so.

Q. You have read this letter, haven't you? A. You handed it to me this morning. I glanced at it hastily. Do you desire me to read it?

Q. Yes; you may read it if you wish to. I want to ask you whether in reading the letter you then can recall whether the incident which that letter refers to, occurred in 1869 or 1868. It

had occurred prior to that letter of course? A. Yes, Sir; Mr. Evarts, I will tell you how to fix the date exactly. Produce in court Mrs. Tilton's memorandum books or diaries for the last four or five years. She took them away from the house. It was at her request that I took this protege of hers there. She will fix the date exactly by her diary.

Q. I am not talking about the contents of the letter at all; I want the date of it.

Judge Neilson—He wants to know whether you can fix the date? A. May it please your Honor, the date is here—Jan. 8th, 1869.

Q. Do you think that is the correct date? A. I should have said it was the correct date, and then Mr. Evarts casts a doubt upon it.

Q. Can you see by to-morrow morning whether it is correct or not? A. Well, I have no access to Mrs. Tilton's diary.

Q. We are not talking about her diary.

Mr. Evarts—No! no! we have nothing to do with that.

The Witness—I will look, Sir, through my own—

Mr. Evarts—Your own letters, if you have the originals of those that are printed, will show you where you were on the 10th of January, in both of those years? A. Mr. Evarts, you have had the originals in your hands of all those letters.

Q. I have not read all the letters. A. You have had them, as I understand.

Q. All that have been printed I have not had, except what I have read. A. They are at your service.

Q. All that have been read are in evidence, of course; but all that have been printed have not been read in evidence; but as you have the originals here in your own handwriting, you can tell by them whether you were in the oil-regions on the 8th of January, 1869, or the 8th of January, 1870? A. Well, Sir, the letters will speak for themselves. There they are; and if the letters don't speak for themselves, I think, perhaps, my little books of record, my little lecture note-books, of which I have several at home, may fix the date. I do not see, though, why the date should not be correct as it is written.

Q. Of course, only you know that in the first days of January it is a common error to put the wrong year. That you know, don't you? A. It is with some people, Sir.

Q. Well, it happens to anybody, I suppose; it certainly does to me? A. Yes.

Q. And I suppose it happens to any one. Well, now, can you remember whether this matter of Winsted did occur antecedent to January, 1869, or only antecedent to Jan. 8, 1870? A. My impression is that it was a considerable period before that, but as I said before my memory of dates is not very good unless associated with some event which bears a date. Mrs. Tilton can tell you all about it, Sir.

Q. Well, I don't know how that is. I don't know what she has to do with this? A. Well, I will tell you what she had to do with it, Sir.

Mr. Beach—No, no.

Judge Neilson—No.

The Witness—I beg your pardon.

Judge Neilson—Don't refer to Mrs. Tilton again, please.

Q. Now, look at that letter and say if that refers to what has



been spoken of here, and I think on Mr. Moulton's examination, as the Winsted letter? [Handing witness letter.] A. Yes Sir.

Q. And my only object is to get at the date of it—if I can. You spoke of it as being an old story? A. Yes, Sir, a very disgraceful one, too.

Q. Well, I dare say. That we have nothing to do with. It is only the question of the stories that were presented. A. I supposed that it was in that particular that it interested you most.

Q. We are quite aware that persons are scandalized. You may have been as well as other people; but the date of it, and your knowledge of it are important to me, and if you can fix that by an examination of your original letters, or if you will take this printed pamphlet that will fix it, I suppose? A. I will do my best to oblige you.

Q. Now, at this interview between you and Bowen, was there a particularization or a reference to a charge that had been made against you to Mr. Bowen on the part of a lady that was connected, in some way, as contributor, or otherwise, with the paper of which you were the editor? A. Not that I know of, Sir; nothing of that sort was mentioned.

Q. Well, of course I am speaking of what was mentioned. You say, then, that at that interview Mr. Bowen did not inform you that he had received an accusation against you on the part of a lady that was employed in connection with those newspapers? A. No, Sir; he never in his life gave me any such information—never, from that day to this.

Q. How did this part of the interview, then, that related to yourself, and yourself alone, close—that Bowen was to confront you, or that— A. It closed in this way: I told Mr. Bowen that if anybody had anything to say against me let him invite that person, and also invite me, to a personal interview, face to face, in Mr. Bowen's presence. Mr. Bowen replied, "That is fair."

Q. And that is the way that branch of it closed? A. Yes, Sir, that is the way it ended.

Q. Now, you have stated that at that interview, Mr. Bowen opened upon charges against Mr. Beecher? A. What is that, Sir?

Q. Mr. Bowen at this interview opened upon charges against Mr. Beecher? A. Opened upon charges?

Q. Yes. A. He opened the charges; he didn't open upon them. [Laughter.]

Q. My question will stand, and we will take your answer. What had led to that in any previous conversation on that occasion that you had had with Mr. Bowen? A. This, Sir; after Mr. Bowen said that that would be fair, he changed the subject; he said to me that in view of my recently formed contracts to write for *The Independent*, and to become editor of the *The Brooklyn Union*, that he hoped I would put my whole life and fire into *The Brooklyn Union*, that I would treat all Brooklyn topics with great particularity, and that I would make among them one conspicuous and chief, namely, Plymouth Church and all its affairs, for he said: "That church has a large congregation, and many of the readers of *The Union* are there," and he then said, "I notice that you have not given particular attention to the church, and indeed you have not attended the church for some months, and your absence has been

rather noticed by me." I told him that I never again should cross the threshold of Plymouth Church.

Q. Mr. Johnson was present at this part of the conversation, was he not? A. I think he was, but I would not be quite certain at what time Mr. Johnson left. I think Mr. Johnson threw in some such remark as this: "Perhaps Mr. Tilton has a reason for not going to Plymouth Church;" something of that kind.

Q. You think he was there? A. I think he was there at a part of that conversation.

Q. And that he did throw in an observation? A. I think he did; yes, Sir.

Q. Of that character? A. And I think that Mr. Johnson very shortly afterwards left. In other words, when the conversation concerning the stories about me was ended, Mr. Johnson left, either then or a little afterwards. He did not stay long to hear our discussion about the papers.

Q. But staid until after Mr. Bowen had opened on this subject of using *The Brooklyn Union* in discussion of Plymouth Church matters? A. Well, I think he did; at all events, Mr. Johnson made some remark about reasons which I might possibly have for not going to Plymouth Church. That is as near as I can recollect.

Q. And you then made the observation that you have just repeated? A. I don't know that I made it then; I think perhaps I might have made it before, or possibly I made it after.

Q. You mean before Johnson's; you made it either before or after Johnson's remark? A. Yes, Sir; I made it sometime during the interview.

Q. In this connection his observation was made in connection with yours, or yours in connection with his, was it not? A. Yes, Sir, but it was not so much in reference to the paper as it was in reference to my going to church.

Q. Well, I am not talking now about the paper, I am talking now about the observations? A. Yes.

Q. Well, how did the matter go on then on Mr. Bowen's part after that observation of yours? A. After Mr. Johnson left?

Q. No, I don't care. I will find out whether he was there or not, if I can, but after this observation of yours? A. I don't think very much was said until after Mr. Johnson left, when Mr. Bowen put some questions to me to know why it was that I did not go to Plymouth Church. That is the part that I now distinctly remember.

#### MR. BOWEN'S DENUNCIATION OF MR. BEECHER.

Q. When did Mr. Bowen commence stating his accusations or imputations against Mr. Beecher? A. I can't remember exactly at what part of the conversation he did. Some of them were stated before Mr. Johnson went away; others were stated after he went away.

Q. Well, did he pursue the matter at some length? A. Well, yes; at some length, necessarily.

Q. You have given on the direct examination, have you not, substantially what he said? A. Yes, Sir.

Q. As you remember it? A. Yes, Sir.

Q. What did you say after he had completed the accusations against Mr. Beecher? A. I don't think he did complete them; I think he kept reiterating them.

Q. Well, but he left off some time or other, didn't he? A. Not until I left the house.

Q. Didn't he? A. No.

Q. Well, when he had got through with them for the first time, what did you say—anything? A. Do you mean what I said at such a particular moment? I don't identify any such particular moment.

Q. It is not as to the lapse of time; it is as to the stage of the conversation. If you don't remember, why I can't help it; if you do, I want to know. A. Mr. Bowen was very solicitous to know from me what Mr. Beecher's relation had been to Mrs. Tilton.

Q. And asked, did he? A. Yes, after Mr. Johnson went away. I had said before Mr. Johnson went away that Mr. Beecher had been guilty of dishonorable behavior towards Mrs. Tilton.

Q. That you stated while Mr. Johnson was there? A. Yes, Sir; or that in substance.

Q. When did the suggestion of the preparation of this letter of demand on Mr. Beecher come up? A. I think that came up in Mr. Bowen's private conversation with me, toward the close of that interview.

Q. Which suggested it, you or he? A. Mr. Bowen suggested it. He said that Mr. Beecher ought not to be allowed to preach to his church.

Mr. Evarts—[To plaintiff's counsel] I would like this letter of demand, one of the early exhibits, No. 4.

[Mr. Morris produced the letter called for.]

Q. Take this, if you please, Mr. Tilton. [Handing witness the exhibit.] Now, the suggestion first came from Mr. Bowen. What was that suggestion? What did he say? A. Mr. Bowen said in substance that Mr. Beecher ought not to be allowed to remain in his pulpit or in the city; that he ought to be driven out. Mr. Bowen then said that he could take no steps towards the accomplishment of such an object as that, because he had in the previous February received from Mr. Beecher a humiliating confession of his guilt, and that Mr. Bowen had given him pardon.

Q. Well, that you stated in your direct examination? A. Yes, Sir; Mr. Bowen, however, stated that if I would make this demand, which he could not in honor, as he stated, initiate, that he would substantiate it and would bring the volume of evidence which he possessed to see that it was carried into execution. That is the substance of it.

Q. I believe you said that on your direct examination. Now, he having so stated it, how did you give your assent to acting in the manner that he suggested? A. I said to him, "Give me a pen and a sheet of paper and I will write it." He said, "I will carry it."

Q. Is that the original draft that you wrote? [Referring to a paper.] A. No, Sir.

Q. Well, have you the original draft? A. Yes, Sir.

Q. At any rate it was amended before it was finally copied there, was it? A. What is that?

Q. The draft as originally written was changed in some words before it was copied? A. Yes, Sir.

Q. Do you remember what the change was? I don't care

anything about the paper. A. Well, I remember, perhaps, with sufficient accuracy to say that this clause was admitted, "for reasons which I explicitly understand." Whether the original draft was in precisely these words I don't know, but that is the substance.

Q. Was all the original draft, including the amendment, in your handwriting? A. The original draft did not include the amendment.

Q. Well, including the amendment that was put upon it. Wasn't the amendment put on the draft? Of course it may not have been. A. I think not, Sir; perhaps it was not; still I will not answer positively, Sir.

Q. I supposed the amendment was put on it and then the complete copy taken from it. I don't know? A. It may be. I think the paper exists.

Q. Very well, that is the change, at any rate. And the address, is that your own also? [Showing witness the address.] A. Yes, Sir; I wrote it all except the small writing there; that is Mr. Moulton's.

Q. Well, we can tell. All that belongs to it as a letter and an address is in your handwriting? A. Yes, Sir; every bit of it.

Q. Now, when you gave this letter to Mr. Bowen was the envelope closed or sealed? A. I think it was open, Sir; that is my impression.

Q. It was given to him, was it not, by you, and taken by him to be carried as an open letter to Mr. Beecher? A. Yes, Sir; that is my recollection. Is not the envelope open now?

Q. It is open now? A. I mean has it been sealed?

Q. You may see whether it has been sealed. [Handing witness the envelope.] It now bears the marks of having been closed? A. Yes, Sir; it was not closed by me.

Q. And was not intended to be? A. No, Sir; it was an open letter as I wrote it. Mr. Bowen must have opened it before delivering it.

Q. It was intended to be carried by Bowen open? A. Yes, Sir.

Q. Intended by you to be carried by him open? A. Yes, Sir; and mentioned and described by me to Mr. Moulton that afternoon.

Q. So that this closing it which has taken place— A. Was not by me.

Q. Was not by you or by him with your consent or purpose? A. Not at all, Sir. Still I didn't lay any injunction upon Mr. Bowen not to close it. That was no feature in the case. Mr. Bowen well knew the contents of the letter. It was an open letter, he and I were jointly responsible for it.

Mr. Evarts—[Reading]:

December 26th, 1870.

Henry Ward Beecher.

Sir: I demand that for reasons which you explicitly understand, you immediately cease from the ministry—

Mr. Beach—Why is it read now?

Mr. Evarts—Because I want to use its contents [continuing to read] from the ministry of Plymouth Church, and that you quit the City of Brooklyn as a residence.

[Signed] THEODORE TILTON.

Q. That was written so, I suppose? [Referring to the word "Signed."] A. Yes, Sir.



Q. Now, Mr. Tilton, how soon after this did you inquire, and how soon after inquiring did you hear, what had happened concerning and at the delivery of this letter? A. I made no inquiry about it, Sir.

Q. Well, how soon did knowledge come to you concerning it? A. The first knowledge that came to me concerning it was through Mr. Beecher's own statement to me on Friday night of that week, Dec. 30th, that it had been delivered. I took it for granted, however, that it had been promptly delivered. That is my recollection at present.

#### MR. BOWEN REGRETS HIS HIGH WORDS.

Q. Now, Mr. Tilton, let me recall your attention to the fact that prior to that interview with Mr. Beecher, to which you have now alluded, you had an interview with Mr. Bowen. A. I did, Sir.

Q. What day was that interview? A. I don't remember whether it was Dec. 27th or 28th.

Q. It was one or the other? A. One or the other; I think so.

Q. Now, at that interview did not the question on the subject of this letter being delivered by Bowen to Mr. Beecher, and the occurrence thereupon, become the subject of conversation between you and Mr. Bowen? A. No, Sir; Mr. Bowen was in a wild anger and I had no conversation with him at all. It was the last interview I had previous to the tripartite covenant two years after.

Q. Now, how did this interview on the 27th or 28th with Bowen come about? A. I will tell you exactly, Sir.

Q. Did he send for you or did you go to him spontaneously? A. Neither, Sir.

Q. Well, how did you get together? A. I will tell you. After I had written this letter on the 26th of December, I told Mr. Moulton about it that afternoon. He told me with great emphasis that I was a fool.

Q. Well, that you have told us. A. Yes, Sir; so that either the next morning or the morning after—my impression is the very next morning—I sent a message to Mr. Bowen by advice of Mr. Moulton, or rather, not by his advice, but by my own judgment, growing out of a suggestion of his, namely, that Mr. Bowen's name ought to have been attached to such a demand, inasmuch as he was to have sustained and enforced it; so I sent a message—I forget whether by note, I think by note—to Mr. Bowen, informing him that I was going to have an interview with Mr. Beecher, face to face. Mr. Bowen came pell mell around to the office and then came the angry interview.

Q. What time of day was this interview? A. It was in the forenoon sometime.

Q. Can't you now recollect whether it was the 27th; whether it was not the very day after—? A. Well, I don't know; it was either that or the day after.

Q. Wouldn't you have probably learned something about the letter on the next day if you had heard nothing from him about it? A. What is that, Sir?

Q. Wouldn't you have sought for some information concerning this letter on the next day if you had not heard from him on that day? A. From whom should I seek it, Sir?

Q. Mr. Bowen. A. Why, I had parted from him in anger. I would not have met him; I would not have spoken to him.

Q. No, no; not at this time. You had not parted with him in anger then when you sent him off on this errand to Beecher? A. I don't understand your question.

Q. Well, now, just listen. If you had not heard something from Bowen on the day immediately following the 26th, wouldn't you have been likely to have sent for him to learn about the reception that the note sent to Beecher had met?

Mr. Fullerton—One moment. I think this case will be long enough without such speculative questions as that.

Judge Neilson—I think he may answer that. A. If I understand the purport of your question, the answer is this: that if Mr. Bowen had come around on that morning in an equable frame of mind, I should certainly have said, "Mr. Bowen, tell me the fate of the letter," but he came around in great anger and there was no conversation between us.

Q. That is not my point. The point is that he did come around the very next morning, and if it had not been that he came you would have been likely to have made some inquiry on that day concerning the reception? A. I think quite likely, yes, Sir; it may be true.

Q. So I supposed. A. I don't say for certain that he came that morning; yet perhaps it was that morning.

Q. That it was the very next morning? A. Yes; but still I won't say for certain.

Q. Now he came around and saw you in your office alone, I suppose? A. He and I together, yes, Sir.

Q. Well, you were alone—nobody else there? A. Nobody there.

Q. Now, can you tell us what the first thing said at that interview was? A. Oh, I don't know the first thing.

Q. Do you know which spoke first? A. No, I don't know. Mr. Bowen was in a great state of excitement. His face was as white as a wall.

Q. Now, do you mean to say, upon reflection, that not a word was said about the delivery to Mr. Beecher, and his reception of this note? A. I mean to say exactly that, Sir. Mr. Bowen was in great anger. The substance of what he said was, that if I divulged to Mr. Beecher the accusations which he, Mr. Bowen, had made against Mr. Beecher, that he, Mr. Bowen, would cease all his relations to me, and that I should never again cross the threshold of his office, or enter his house. He said that with great vehemence and emphasis. That was the substance of the conversation. It was a very brief interview; he allowed me no time to ask questions of any sort.

Q. Do you mean he left without giving you an opportunity to say anything to him? A. I think the sum and substance of what I said to him was to answer pride for pride, scorn for scorn; that I would not be deterred by his threats; that I should tell Mr. Beecher or any other person, utterly uninfluenced by any denunciations of that kind. That is all I remember of the interview.

WHAT MR. TILTON EXPECTED OF THE JOINT DEMAND OF MR. BEECHER.

Q. And you had no curiosity about the delivery of the note or its reception? A. I did not have a great deal of curiosity about it.

Q. Why didn't you ask Bowen about it? A. Well, because Mr. Bowen was not a man to be asked questions of then. He went out of the office slamming the door behind him. I was not the man to seek him out afterwards. The only persons that knew anything about the matter were Mr. Beecher and Mr. Bowen. I could not see either of them.

Q. Well, Mr. Bowen was there. A. Mr. Bowen left.

Q. Now, when you sent—when you wrote this demand on Mr. Beecher and sent Mr. Bowen, or delivered it to Mr. Bowen to communicate as your joint act, as you have stated— A. Yes, Sir.

Q. What was your object in sending it; what result did you expect from sending it? A. My object was to strike him right to the heart, Sir.

Q. Now, what result did you expect from thus striking him right to the heart? A. That he would be pricked and wounded as he has been.

Q. And nothing more? A. Nothing more.

Q. You did not expect that he would be driven from the pulpit or from Brooklyn? A. Yes, Sir; I did.

Q. You did? A. Yes, Sir; and he will, too. [Sensation.]

Q. Then you did expect— A. I certainly did, Sir.

Q. That from the delivery of that message to him he would be driven from his pulpit and from Brooklyn? A. Mr. Bowen said that he could drive him out of his pulpit in twelve hours. I believed what Mr. Bowen said.

Q. And you thought this would do it? A. Yes, Sir; I thought that Mr. Bowen would do it.

Q. Well, this method would do it? A. I didn't think that my little letter alone would do it.

Judge Neilson—He says "this method."

The Witness—This method. Mr. Bowen said that he would drive him out of his pulpit in twelve hours.

Q. And you believed him? A. I believed him; yes, Sir.

Q. And you together sent, as your joint act, this letter? A. Yes, Sir; we did.

Q. And you expected that result from it? A. Yes, Sir, I did.

Q. Now, Mr. Tilton, how soon did you go to your house that day, after this interview with Mr. Bowen, the 27th or 28th—whatever it was? A. You mean on the day that I sent the letter demanding Mr. Beecher's retirement?

Q. No; on the day of your last interview with Mr. Bowen? A. I do not remember.

Q. Your usual time, so far as you remember, was it? A. I cannot say that.

Q. What was your usual time of going home from your office under ordinary circumstances? A. Usually I went home and took lunch at 1 o'clock.

Q. And returned to business? A. Yes, Sir.

Q. Now, when you returned to your house that day, were you excited and did you exhibit excitement in your house; I

leave out all reference now to any interview or intercourse with your wife? A. I cannot remember that, Sir.

Q. You do not remember being excited? A. No, Sir; it would be quite likely.

Q. In consequence of this interview with Mr. Bowen? A. I don't remember being in my house; I do not bring up the circumstance.

Q. You don't remember being in your house at all? A. No, Sir.

Q. Did you at your house on that day, on your first visit to it after this interview with Mr. Bowen, say to the nurse and others there (others than your wife) that you were ruined? A. No, Sir; I did not.

Q. Nothing of that kind? A. No, Sir; I was not ruined.

Q. I did not ask you whether you were ruined; I asked you whether you told the nurse and other persons than your wife (whom I leave out of the inquiry) that you were ruined? A. Well, I answer you no.

Q. Well, so let it stand? A. Yes, Sir; I was not in the habit of talking of my business affairs to the nurse. [Laughter.]

Q. I was not arguing about it; I only want you to answer my questions.

Judge Neilson—Please only to answer the questions. I wish the gentlemen would be quiet in Court.

The Witness—I do not remember who the nurse was. What was the nurse's name, Mr. Evarts?

Mr. Evarts—My dear Sir, when I am on the witness stand I will answer all I know. [Laughter.]

Mr. Beach—That will take a very long answer.

Mr. Evarts—Do you think so? [To the witness.] Be kind enough just to answer my questions.

Judge Neilson—Only answer the questions.

The Witness—Mr. Evarts sets me the example of stating everything he knows.

Mr. Evarts—Oh, no. Do you remember being in any excitement or having any impression that the result of this attack upon Mr. Beecher was going to be disastrous to you? A. Not at all, Sir. How could it have been disastrous?

Q. I do not reason with you. I only ask whether you had that impression? A. I had not.

Q. Do you not remember on that occasion of coming to your house on that day, after this interview with Mr. Bowen, that you got out your valedictory in *The Independent*, and paced up and down, and exhibiting great excitement, and immediately went to work preparing papers connected with this subject? A. No, Sir, I have no such recollection.

Q. You recollect nothing of the kind? A. Nothing of the sort, Sir.

Q. Did you inform Mr. Moulton of this angry interview with Bowen? A. I think I did, Sir.

Q. And did you then plan any step, in connection with Mr. Beecher, thereupon? A. No, Sir.

Q. None whatever? A. Not that I recollect.

Q. Now, Mr. Tilton, you knew of *The Christian Union*, Mr. Beecher's newspaper, at the time of its establishment, did you not? A. When was it established?

Q. Well, that is exactly what I was going to ask you. [Laugh-



ter.] I understand that it was established in the beginning of the year 1870—January, 1870; in other words, that it had been in existence through the year, the month of December of which we are now talking about? A. I could not have answered that question, but I take your statement for it.

Q. Do you recall enough of the situation to know that Mr. Beecher's newspaper, *The Christian Union*, had been established before this month of December, in which your connection with *The Independent* terminated? A. That it had or had not?

Q. That it had? A. My impression is Mr. Beecher was writing editorial articles either in *The Church Union* or *Christian Union* for a number of months previous to that, but I will not be positive.

Q. Do you mean that you, being the editor of *The Independent* all through that year of 1870, did not know whether Mr. Beecher's paper, *The Christian Union*, was in existence during that time? A. *The Christian Union* or *The Church Union* he had some connection with; my impression is that his connection with a newspaper at that time was with *The Church Union*, and not *Christian Union*.

*The Church Union* was turned into the *The Christian Union*? A. Yes, Sir; but I do not remember what name the paper bore at that time.

Q. I don't care which name it bore, but Mr. Beecher was the editor of this religious paper, in Brooklyn, wasn't he? A. Brooklyn?

Q. Or New York? A. I think he was.

Q. Prior to this time of which we are speaking? A. Whether editor-in-chief of *The Church Union* I am unable to say; I do not recollect the precise nature of his relation with the paper; the only recollection I have is that, during 1869, he resumed editorial labors in some form; I have an indistinct recollection of that.

Mr. Evarts—[Looking for a letter.] Have you that letter, Mr. Shearman?

The Witness—I think in my letter the name of the paper is given—in my letter to Mr. Bowen; whether it was *The Christian Union* or *The Church Union* I do not exactly recollect.

Q. Oh, this is the letter [showing letter]—a letter from yourself to Bowen, January 1st, 1871? A. That mentions the paper; that will give the correct name.

Q. It is in evidence here. Just look at this letter and see if it will not recall the name? A. Yes, Sir; it was called *The Christian Union* at that time; it had been previously called *The Church Union*.

Q. And, it was a part of the conversation of Mr. Bowen in regard to Mr. Beecher, that the letter should demand not only Mr. Beecher's abdication of his pulpit, but the cessation of his writing for *The Christian Union*? A. Yes, Sir; that is what Mr. Bowen demanded.

Q. But that was left out of the letter or summons? A. Yes, Sir.

Q. Now, Sir, at that time, do you know how large the circulation of this paper of Mr. Beecher's had become? A. No, Sir; I do not.

Q. And at this time—and if so, how long before, if you know,

had there been started a rival paper at the West, which interfered with the former ground of patronage of *The Independent*? A. I do not know of any such paper, Sir. Do you refer to *The Advance*?

Q. Yes, Sir. A. Old Sidney Morse used to say that all newspapers helped each other, and I do not think that any one paper injures another.

Q. Did you know of the establishment of *The Advance* as a newspaper in the West? A. Yes, Sir.

Q. Appealing for patronage to the religious community? A. Yes, Sir.

Q. When was that established? A. I should think in 1868 or 1869; I think about that; I cannot remember distinctly.

Q. And do you know that it was established because of dissatisfaction in some circles, or quarters or sections of opinion at the West with *The Independent*? A. I think it was; yes, Sir; I think that was one ground; *The Independent* was too liberal.

Q. And this paper was meant to be more orthodox? A. Oh! I don't know about being more orthodox; I think *The Independent* was orthodox; orthodoxy is my doctrine; heterodoxy is yours, Mr. Evarts.

Q. Heterodox in the sense that you mention in your letters; this paper was more orthodox, and yours "liberal"? A. Yes. *The Advance*, as I understand, was started to be a representative mouthpiece of the Congregational denomination. *The Independent* had cut loose from that denomination; had swung clear, and declared itself no longer an organ of the denomination; there was an organ of the denomination in Boston called *The Congregationalist*. There was no organ of the denomination in New York when I ceased to have *The Independent* their organ; they wanted such an organ in the West, and they started *The Advance*. That is the best account that I am able to give of the starting of that paper.

Q. And that had been going for two or three years—about two years? A. I will not be accurate as to the date.

Q. Now, how was Mr. Bowen overruled in not including in this summons upon Mr. Beecher that he should retire from supporting *The Christian Union*? A. After I wrote that note Mr. Bowen said, "Why did you not put in that he should not write for *The Christian Union*?" I said, "I have put in enough."

Q. And he yielded? A. He said nothing more about it.

#### MR. TILTON'S INSINUATIONS AGAINST MR. BEECHER'S MORALITY.

Q. Now, Sir, you have stated that in the interview with Mr. Beecher on the 30th of December you had narrated to him, as communicated to you by your wife, certain conversations between your wife and him? A. Yes, Sir.

Q. And you gave us, as a part of what you stated to him, that this communication had come to you in July, 1870? A. Yes, Sir.

Q. Now, Sir, between July, 1870, and the 30th day of December, 1870, had you spoken in any terms to anybody concerning any relations between Mr. Beecher and your wife? A. Yes, Sir.

Q. Have you named in your direct examination all the per-

sons to whom you had said anything in that interval concerning any relations between your wife and Mr. Beecher? A. I think I named that I gave Oliver Johnson, and Mrs. Bradshaw, and Mr. Moulton the entire truth; I spoke to certain other persons to whom I did not tell all the story; Mr. Bowen was one of those.

Q. I do not know what you said, but you told him the entire truth—you said that you spoke to him. Now, did you speak to any other parties? A. Members of the family?

Q. Members of your own family. A. I suppose I may call my mother-in-law a member of my own family; I spoke to Mr. Richards and to his wife about it.

Q. You did yourself? A. I think I did.

Q. To all these people? A. Yes, Sir.

Q. You have, in your direct examination, spoken of these last named people as having been spoken to by some persons? A. By Mrs. Morse; yes, Sir.

Q. But do you now say that you spoke to them yourself? A. They had been spoken to by Mrs. Morse, and I then spoke to them; I did not tell the story originally to them.

Q. Now, in the same interval you had, in general terms of imputation upon Mr. Beecher, in respect of morality, used severe language—had you not? A. I believe that I had once or twice spoken roughly of him; I don't remember that I did, but words were brought to me afterwards as coming from me, and I think quite likely that I used them; I refer, now, to a remark that I had said that Mr. Beecher preached to his mistresses; I don't remember having made it, but I presume that I did.

Q. The language that I understand you to have spoken about in your direct examination, which was imputed to you, was that you had said he preached before forty of his mistresses? A. I do not undertake to be accurate, Sir, as to the number.

Q. That may be; but the words which were imputed to you as having been said were "forty of his mistresses." A. It was put to me that I had said that he had preached to his mistresses; it might be "seven" or "several."

Q. You are mistaken; it was put to you, by reading from a letter, that you had said he had preached to forty of his mistresses. A. Yes, that was stated to me; that was afterwards, in the charges brought by Mr. West—it was stated that I said that he had preached to "seven" or "several" of his mistresses.

Q. I don't mean those charges by Mr. West; I am speaking of a long time afterwards; that was in 1867, and that was two years afterwards. Now, I understand you to answer that you cannot remember that you expressed the number of mistresses? A. Yes, Sir.

Q. But that you did express that sentiment, during this interview? A. Understand me correctly; I do not remember having made such a remark; but it was attributed to me, and I think all the probabilities are that I made such a remark; but I do not remember whom I made it to.

Q. But it was attributed to you at a point of time very near the transaction, on that occasion? A. On what occasion?

Q. The occasion of your making this charge; this letter that was before you, in which the inquiry was put to you whether you had said that was in the month of January, 1871, was it

not? A. No, Sir; that was in the month of November, 1870.

Q. No? A. Yes, Sir. I beg pardon.

Q. You do not know what I am talking about. A. I do know exactly, Sir.

Q. No, you do not know what I am talking about. A. I do, Sir, exactly.

Q. No; there was a certain meeting in 1871. A. Yes, Sir.

Q. And at that meeting Mr. Beecher, and Mr. Moulton and you were together, and a letter containing such a charge was presented to you to know whether you had said so? A. That is correct so far as it goes.

Q. That was in January? A. Yes, Sir; I had received the letter in the previous November.

Q. I don't know anything about that: I do not care about it, and I do not inquire about it. It is enough that in January the question was put to you, whether you had not, in the preceding few months between July and that date, made that imputation. Then the matter was fresh in your mind, was it not, in January, 1871, when Mr. Beecher, and Mr. Moulton, and yourself were present? A. It was.

Q. Whether or not you had accused Mr. Beecher of preaching to forty of his mistresses or not, during the preceding Summer? A. Yes, Sir; I made answer that probably I had spoken very roughly, that I had not spared him.

Q. And you believe you did say that? A. I will not say I used such an expression; I think the probabilities all are that during the Summer I made use of that expression, or its equivalent, without any definite accuracy as to the number.

Q. To whom did you make use of that expression? A. I think quite likely to Mrs. Morse or to Mr. Richards; I don't know to whom; as I said before, I don't remember having made the remark; but as it was brought home to me in one of my wife's letters during the Summer, the chances are that I said it; that is what I mean.

Q. Now, beyond these general statements to Mr. Beecher's prejudice during that period of time, and these statements, whatever they were, that you had made to the persons you have named, had you said anything to any one else? A. Well, sir, I would not like to answer that question; perhaps I had; because from July, 1870, to the end of that year, I was not under any restraining influences to Mr. Moulton, and I spoke my mind very freely sometimes.

Q. And for aught you know you mentioned this thing at some times to other people besides? A. I am very certain I did not say anything to Mrs. Tilton's detriment, except to those three persons that I have named, but I did not spare Mr. Beecher.

Q. You mean to Moulton and Johnson and Mr. Bradshaw? A. Yes, Sir; I had some conversation with Judge Morse; I don't know how far that went, nor do I know whether he first obtained what he knew from me or from some one else.

Mr. Evans—I did not ask that.

Mr. Beach—It is very proper for him to mention.

Mr. Evans—It may be proper for him to say when some one asks him.

Mr. Beach—It is proper for him as a qualification of his answer.



MR. TILTON'S OPINION OF THE EXAMINING  
COMMITTEE.

Mr. Evarts—Do you remember about an attendance before this Church Committee and an examination by question and answer there—do you? A. No, Sir; remember going before the Committee; I decline to have it called an examination; it was not.

Q. No matter what it was. You remember being there, and questions being put to you and your making answers? A. Yes, Sir; that I remember.

Q. Now, Sir, did you not say on that occasion in answer to this question: "I ask what evidence you stated against Mr. Beecher to Mr. Bowen,"—in answer to that question, did you not make this answer: "I must answer your questions in my own way. I came to tell you the whole truth, and not fragments of the truth. Mr. Bowen wanted me to speak more in the paper of Plymouth Church. Mr. Johnson said: 'Perhaps Mr. Tilton has a reason for not going to Plymouth Church,' and thereupon Mr. Bowen was curious to know the reason. I, in a solitary phrase, said that there was a personal, domestic reason why I could not go there consistently with my self-respect; that Mr. Beecher had been unhandsome in his approaches to my wife. That is the sum and substance of all I have ever said on this subject, to the very few people to whom I have spoken of it?" A. What is your question?

Q. Didn't you in answer to the question read to you, make that answer? A. I didn't make the last part of that answer, Sir, and I repudiated in a public card that report of my interview. I distinctly, before the Committee, charged Mr. Beecher with adultery, and they did not put it in the report.

Q. Well, now, I am not asking you about that. It has nothing to do with it. I have asked you a simple question, whether in answer to the question I read to you, you did not make the answer that I read to you? A. I did not, Sir.

Q. Very well; what you did afterwards I have nothing to do with.

The Witness—I did not, Sir; in other words, that Committee were informed by me—

Mr. Evarts—No matter.

The Witness—It is the last clause.

Mr. Evarts—I have not asked you anything about it.

Mr. Beach—Well, he has a right to answer that he made a part of that reply and part he did not. That is just what he was saying when you interrupted him.

Mr. Evarts—No, he was not.

Mr. Beach—Well, I say that he was.

Mr. Evarts—I say he was not.

Mr. Beach—The minutes will show.

Mr. Evarts—He was talking about his repudiation of the report.

Mr. Beach—He was not, Sir, when the counsel last interrupted him.

Mr. Evarts—Well, I say he was.

The Witness—That was the substance of what I said to Mr.

Bowen. I didn't tell him the whole story, but I had told others the whole story, but very few.

Mr. Evarts—Now, I have not asked you. You say that you did not make that last part of the answer? A. No, Sir; I say that the answer is imperfect; part of it is omitted; that is the answer that I generally made. There were a few exceptions to that answer, namely, Mr. Johnson, Mr. Moulton and Mrs. Bradshaw.

Q. Well, with those exceptions, was the sum and substance of all that you had ever said to the persons to whom you spoke, that Mr. Beecher had made unhandsome approaches to your wife? A. Yes, Sir; impure proposals; that is the sum and the substance. I did not wish to incriminate Mrs. Tilton.

Q. No matter what you wished; the fact was that that is all that you said? A. That is all I said.

Q. With the exception of these three persons? A. Well, understand me, Mr. Evarts, the three persons to whom I allude are persons to whom I told the story—there were other persons to whom I talked, to whom Mrs. Tilton told the story, and Mrs. Morse told the story.

Mr. Evarts—That you don't know anything about?

The Witness—I do know all about it.

Q. I am talking about persons to whom you communicated information. A. Yes, Sir, but I volunteered the whole story to those three persons, with the addition, perhaps, of Judge Morse.

Q. About him you don't remember? A. I don't remember the exact extent of that conversation with him.

Q. Now, when you were communicating the whole story, that is another matter—but with the exception of those three persons, the sum and substance of what you communicated yourself to other people was the unhandsome proposals, or the impure advances? A. Yes, Sir; and then perhaps I ought to mention that there was a chance interview in my house between Mrs. Tilton and myself, at which Bessie Turner heard the whole story.

Q. I have not asked you that. I ask you a voluntary communication which you made to outside people? A. I don't remember any other voluntary communication to outside people.

Q. Now, Sir, when you first spoke to Mr. Moulton on the subject of any relations between Mr. Beecher and your wife, was not all that you told him, that Mr. Beecher had made unhandsome approaches or impure proposals to your wife? A. Yes, Sir, that was December 26th. That is all I told him on that day.

Q. That is all you told him that day? A. Yes, Sir.

Q. And that was the first time that you had spoken to him at all on the subject? A. Yes, Sir.

MR. TILTON'S PRAISE OF HIS WIFE.

Q. On this same examination, in answer to this question: "Have you not frequently asserted the purity of your wife?" did you make this answer: "No, I have always had a strange technical use of words; I have always used words that conveyed that impression?" A. I cannot see any sense in that word "strange," Sir; I think there must be some misprint; what I meant was that I had always tried—

Q. Well, I ask whether you made that answer or not? A. Well, I did not make use of any such words as "strange technical use;" it is evidently a misprint; you can see it yourself.

Q. I don't know anything about it. You say you did not make that answer? A. Why, I say, Sir, that of course I did not make any such answer: "A strange technical use of words!" There is some other—it is wrong—bad English—it is not right. I will tell you what I said—

Q. Well, did you say, "I have always used words that conveyed that impression?" A. I did, Sir, and I always used such words on purpose, to convey to everybody the impression that she was a pure and good woman, and if any word of mine will carry that impression around the earth to-day, I should like to utter it from this stand.

Q. Well, then, you did use words that were intended to convey the impression of the purity of your wife? A. I did, Sir. But I did not use it in that form. I did not use the word "purity." I used other words. I think she is a pure woman.

Q. You used words that conveyed that impression? A. Yes, Sir.

Q. But used other words to do it, with the intention to convey? A. Yes, Sir.

Q. And with the effect of conveying? A. Yes, Sir; with that deliberate design, for I hold, with Mr. Beecher, that she is guiltless.

Q. And with that constant effect? A. Yes, Sir.

#### THE FIRST HOSTILE INTERVIEW REHEARSED.

Q. Now, Mr. Tilton, you had at one time in your possession a note or memorandum of some kind, as you have stated in your direct examination, written by Mrs. Tilton on the 29th of December, 1870, which you gave to Mr. Moulton when he went to bring Mr. Beecher to the interview with you on the 30th? A. Yes, Sir.

Q. At what part of the day of the 29th was that paper obtained? A. Well, Sir, at this moment I don't recollect.

Q. Don't you recall to yourself the occasion and the scene on which you obtained it. I don't ask you to describe it, I only want to know whether you recall or not, to yourself, the occasion on which you received that paper from Mrs. Tilton? A. I didn't see it written, Sir.

Q. What? A. I didn't see it written at all; not that I remember.

Q. Well, after receiving that paper, did it remain in your possession, and uncommunicated to any other person during the whole of the 29th and during the whole of the 30th, until you handed it to Mr. Moulton? A. Yes, Sir; nobody else saw it but Mr. Moulton.

Q. And Mr. Moulton did not see it until you handed it to him at his house when he was starting to go to Mr. Beecher's? A. Not until then.

Q. Now, Sir, was that written on an ordinary note paper of your wife's? A. It was—what do you mean by an ordinary note paper? My recollection is that it was quite a *petite* note sheet. Whether it was ordinary or extraordinary, I could not say.

Q. Well, I said ordinary note paper of your wife's. We have

various exhibits here—what you call a small piece of note paper? A. Yes, Sir; I think so.

Q. "*Petite*," you call it? A. Yes, Sir.

Q. Was it in an envelope? A. It was inclosed in a white envelope without direction on it.

Q. And that was of the ordinary size for such a note? A. Well, I don't remember the size of it.

Q. Well, it was an ordinary letter envelope or note paper envelope for such a note, wasn't it? A. That I don't remember—whether the envelope exactly fitted the paper or not; I don't recall.

Q. Well, you received them both together, did you not? A. Yes, Sir, I think I did.

Q. And from your wife, I suppose? A. My recollection is that she handed it to me in that condition; this little memorandum inclosed in a white envelope, unsealed; that is my best recollection.

Q. Unaddressed and unsealed? A. Unaddressed and unsealed; that is my recollection.

Q. Very well; now, when you went to Mr. Moulton, had you prearranged the transaction that you proposed to carry on on the 30th? A. I don't think I understand your question exactly, Sir.

Q. Had you preconcerted with Mr. Moulton the course of your proceedings on the night of the 30th of December? A. No, Sir; Mr. Moulton, as yet, knew nothing of my plan; nobody but Mrs. Tilton knew anything about it.

Q. Then, whatever you said or did with him that night was the first, and all that you said or did with him previous to the interview on the subject of that interview? A. I don't—Do you mean to ask me whether I had had any conversation with Mr. Moulton at all between the 29th of December and the 30th?

Q. About procuring this interview of the 30th? A. Oh, no.

Q. Nothing before? A. No.

Q. Very well; you went, then, to Mr. Moulton's house with this note inside this envelope? A. Yes, Sir.

Q. Now, why did you give him the note to carry to Mr. Beecher? A. I will tell you exactly why. I asked Mr. Moulton if he would go down and bring Mr. Beecher to me for an interview on a matter of great importance, concerning Mr. Beecher's relations to my family. Mr. Moulton said he would; "But," said he, "it is prayer-meeting night, and it may not be convenient for him to come." I told him it was on a matter of very great importance I wanted to see him, and I suddenly took that paper out of my pocket, and I said: "Mr. Beecher will come, without doubt, when he knows the object of this interview. At the same time I don't care to have you state the object of the interview if he will come without it; I would rather break it to him myself. But if he makes any objection to coming, then you may take this paper and show it to him; then he will come."

Q. And he took it and left the envelope with you? A. I took it out of the envelope; put back the envelope—I made a copy of it right on the spot on that envelope. Mr. Moulton read it, and expressed great amazement.

Q. Well, he took off this paper—this original paper? A. Yes, Sir.



Q. And left you with the envelope? A. Yes, Sir.

Q. You then and there copying on the envelope? A. I did not copy it after Mr. Moulton went off; I copied it before he went off.

Q. No; I say, you then and there copying it on the envelope before he went? A. Yes, Sir.

Q. And when you thus copied this letter, this note, on the envelope, there was nothing written on it at all? A. Yes, Sir; there was the copy which I had just made.

Q. Well, that is after you had done it? A. Yes, Sir.

Q. But there was no writing on that envelope? A. No, Sir.

Q. Until you made this copy? A. Nothing at all on it; no, Sir; I made that copy in a few little shorthand lines.

Q. And I suppose upon the smooth side of the envelope? A. Well, Sir, I presume so.

Q. Now, between the time that Mr. Moulton went away and Mr. Beecher came to the interview did you write anything else on that envelope? A. I did, Sir; I took my pencil and I made two or three little dates, memoranda, and so on, all in shorthand notes.

Q. And nothing else? A. No, Sir; not that I recollect.

Q. Do you recollect what those dates and memoranda were? A. Yes, Sir, they were little dates connected with Mrs. Tilton's narrative to me, and also some little extracts which were then fresh in my mind from her letters in the West—broken-hearted letters which she had written; they were little memoranda of some things I wanted to say to Mr. Beecher when he came.

Q. Did you make whatever entries of extracts or allusions to her letters that you have now spoken all from memory, or did you have the letters there? A. O! simply from memory.

Q. Simply from memory? A. Yes, Sir.

Q. During this interview, from its commencement to its close, had you in your possession or hands, for use in that interview, any other written paper than this envelope on which you had made these notes? A. No, Sir.

Q. None whatever? A. No, Sir; not that I recollect; I don't remember any.

Q. And that has been destroyed? A. That I picked to pieces in talking.

Q. Now, just answer my question: that has been destroyed? A. Yes, Sir; that is all I remember.

Q. Now, Sir, when did you receive back the original note or memorandum of Mrs. Tilton that you had handed to Mr. Moulton for the particular use you have described? A. I received it back shortly after the signing of the tripartite covenant in April, 1872.

Q. Yes; for what purpose, and what was done with it? A. I did not want to die leaving that paper in existence; I begged it from Mr. Moulton, carried it back to Mrs. Tilton; she destroyed it.

Q. In your presence? A. Yes, Sir; in my presence; I saw her destroy it.

Q. And you know that it was the very paper? A. That it was the very paper.

Q. Yes; do you know that the paper thus destroyed was the very paper that you had that night? A. Oh! yes, Sir.

Q. Then every original paper, or copy, or memorandum that was before you, or that was used in this interview of the 30th of December has been destroyed, hasn't it? A. There was only that one; only that little envelope.

Q. Everything has been destroyed that was in writing, either an original, or copy, or memorandum? A. Well, there was nothing but that little envelope—one thing.

Q. Well, that is so; it has all been destroyed, whatever there was? A. Well, this is the only thing that was destroyed.

Q. Well, two things, because your wife's original note—A. That was not before us that night; Mr. Moulton had it.

Q. Well, it had been before you; you had it and gave it to Mr. Moulton? A. Well, but it was not present at that interview.

Q. Well, I know I have not confused the matter at all; every paper you had that night in reference to this interview, either the original or this memorandum, copy, or the memoranda of notes for that interview have been destroyed? A. The little envelope which contained the copy and the memoranda was destroyed that night, and the original confession itself was destroyed two years afterwards; that is the whole story.

Q. Now, when Mr. Beecher came and took the seat as you have described, the first thing you said to him was about your previous demand, wasn't it? A. I said something to him about his having received, I presume, the letter of demand.

Q. You have stated it in your direct examination; that was the first matter that you introduced to his notice—an inquiry whether he had received it or not, and that he had received, as you presumed? A. No, Sir; I did not ask if he had received it; I told him that I presumed he had.

Q. Well, that was a form of inquiry, as I understand it. However, that was said; and that was the first thing that you did say, and he assented to the fact that he had received it, didn't he? A. Yes, Sir.

Q. Now, what did you say to him then on the subject of that order or demand? A. I told him that I wanted him to consider that demand unwritten, not made—blotted out.

Q. You wished then to put yourself towards him as if you never had sent that demand? A. Precisely that.

Q. Precisely that? A. Yes, Sir.

Q. You did not occupy, then, the same position, or have the same disposition in regard to that demand at that moment that you had, at the time you had sent it on the preceding Monday? A. No, Sir; I did not. On Monday I forgot my wife; and afterward I remembered her.

Q. You had entirely changed your position in that regard? A. Yes, Sir; for my wife's sake I had.

Q. And you wanted the thing undone? A. Yes, Sir.

Q. And intended that it should so stand between you and Mr. Beecher, if it could? A. Yes, Sir; told him so very distinctly.

Q. Now, do you remember whether, in that interview, you were seated, or whether you maintained a standing position while Mr. Beecher was sitting? A. I remember exactly.

Q. And you are sure that you were seated during the whole

of that interview? A. I remember that Mr. Beecher was seated. Did you ask me about myself?

Q. I am asking about yourself, whether you did not maintain a standing position while Mr. Beecher was seated? A. I think I sat part of the time and stood part of the time. I am not so positive about myself at this moment. I think I sat too.

Q. How will you have it? A. I don't know at this moment. The scene is not so vivid in my mind at present. I have been all day long under a very severe and painful illness.

Mr. Evarts—I am very sorry for that, but I would like to get at the fact.

The Witness—Mr. Beecher remained seated during the whole; that I remember very distinctly.

Q. That you have stated, and I didn't ask you generally. Then you cannot say whether you were seated, or whether you were standing? A. I think I sat part of the time, and stood part of the time.

Q. Now, before you entered upon recounting the narrative or address to Mr. Beecher concerning his relations with your wife, there was also some other topic of conversation, was there not, after you told Mr. Beecher that you wished that summons or demand, whatever it was called to him, treated as if it never had been made? A. Yes, Sir.

Q. There was some conversation between you and him before he commenced to state his relations with your wife? A. When I was putting my hand in my pocket to find the memorandum I remember he asked me what Mr. Bowen had been saying against him. I then narrated what I put in my direct examination.

Q. You told him the substance of what Mr. Bowen had said? A. Yes, Sir.

Q. And he gave you certain answers of surprise, &c., at that, did he not? A. Yes, Sir.

Q. As you have stated; A. Yes, Sir.

Q. And not until you got through with both of those subjects did you introduce this matter of his relations with your wife. A. What do you mean by "both of those subjects?"

Q. Why, about the demand and about what Mr. Bowen had said about Mr. Beecher? A. I introduced the whole evening by referring to the letter of demand, and also to my wife's request that it might be recalled. When I was taking it out Mr. Beecher asked me what Mr. Bowen said, and I told him. The whole interview was in reference to Mrs. Tilton.

Q. No matter what it had reference to; I only want to get at what occurred. Had you this memorandum before you, made as you have now stated, when you went on with this discourse with him that you have given? A. I cannot say it was a discourse.

Q. Well, address? A. No, Sir; it was not an address; it was a statement.

Q. Well, a statement to him? A. Yes, Sir.

Q. It was interrupted by him, was it? A. I remember his making a little attempt to interrupt at one time, and I told him to hear me to the end. There was practically no interruption on his part.

Q. What form of demonstration did you recognize as an attempt to interrupt you? A. I thought he was going to speak.

Q. He made a motion as if he was going to speak? A. I don't distinctly remember it.

Q. Something you treated as a purpose of speaking? A. Yes, Sir.

Q. At what stage of your statement was that purposed interruption; do you remember? A. I think it was at the conclusion of my reading Mrs. Tilton's confession.

Q. This little paper which you had—you call it a confession? A. Yes, Sir.

Q. It was this little paper which you had on that table? A. Yes, Sir; that is my present recollection.

Q. Did you read that at the outset of your statement to him? A. I read that; it was not the first of the interview; the first part of the interview, as I remember, was my reference to his having received a letter.

Q. Oh, well; I agree. But after you got through that, after you had got upon the matter of his relations with your wife, was the reading of that paper the first thing that was done? A. I don't remember whether that was at the very beginning, or whether it was somewhere in its proper place in the narrative; that I do not recall at the present moment.

Q. You cannot say whether it was at the outset, or near the outset, or not? A. No, Sir; there was no formal manner of presenting the case.

Q. But as soon as that was brought to his notice he made as if to interrupt you by speaking? A. He made as if to say something; yes, Sir.

Q. Then how did you arrest that purpose? A. I said simply, "Hear me to the end;" something of that sort.

Q. Now, when you had got through—he did listen to you to the end—didn't he? A. Yes, Sir.

Q. Without interruption? A. Yes, Sir.

#### A BIT OF LITERARY CRITICISM.

Q. And when you had got through, did he not say this: "Theodore, this is all a dream?" A. As near as I remember, he said: "Theodore, I am like one in a dream. This is *Dante's Inferno*," or "I am in *Dante's Inferno*;" some such expression as that.

Q. Are you sure that he referred to *Dante's Inferno*? A. Yes, Sir; I am not sure, I am certain.

Mr. Evarts—Well, I don't know the distinction; but there is some, I suppose.

Mr. Fullerton—He is certain.

The Witness—Excuse me, Mr. Evarts; I did not mean to be captious as to the word. I am certain the sun rose this morning, and I am sure it will rise to-morrow morning. I am certain as to past facts, and I am sure as to future facts, which must, in the necessary order, come about. I beg your pardon for being so critical in that small degree.

Mr. Evarts—I am not so sure you are right about it.

The Witness—I am certain I am right about it.

Q. Now, Mr. Tilton, do you remember Mr. Beecher expressing a doubt, or intimating a doubt, as to whether Mrs. Tilton had



written any such paper? A. No, Sir; he never intimated any such thing.

Q. You are quite sure of that? A. No, Sir; I am quite certain.

Q. Now, don't you remember that on an expression of doubt or surprise concerning Mrs. Tilton having written any such paper as that—you had no original before you? A. No, Sir.

Q. You then said to him, "It is but a few squares to my house; go and ask Mrs. Tilton for yourself whether or not she wrote that letter?" A. Ah! but that was my suggestion, and not his.

Q. I ask you whether you did not say that to him? A. I don't remember using any such expression as that. Do you take that from my examination before the Committee?

Mr. Evarts—Well, I will show you where I take it from before I get through. [Laughter.]

#### THE AUTHENTICITY OF THE CONFESSION.

The Witness—As I understood you to say, you asked me whether Mr. Beecher threw any doubt—

Mr. Evarts—Yes.

The Witness—as to whether Mrs. Tilton had made that confession?

Mr. Evarts—An expression of doubt, or uncertainty, or surprise, as to Mrs. Tilton having written any such note? A. Ah! what I think he expressed was a great deal of surprise that she should have written that, not any doubt as to its character or contents, and that he wanted permission to go again and see Mrs. Tilton, and I said he might go.

Q. I am not asking you that; I am asking you whether he used language to carry that impression to you of doubt or uncertainty in his mind, or surprise in his mind, at Mrs. Tilton having written any such note? A. No, Sir; but great grief and surprise.

Q. At what? A. At having done it—not doubt, but surprise.

Q. Great surprise at her having done it? A. There is difference between casting a doubt on the character of—

Q. I am not asking you that; I am trying to get facts. In answer to that expression that you describe as surprise, did you say, "It is but a few squares to my house. Go and ask Mrs. Tilton for yourself, whether or not she wrote that letter?" A. Well, I may, perhaps, have used some such expression as that; I don't remember, but it was not in reference to any doubt.

Q. Well, no matter, you used the expression? A. But only as to surprise.

Q. Now, thereupon did he indicate a purpose of going? A. He went staggering down stairs.

Q. Did he indicate to you a purpose of going to your house? A. No, Sir; he didn't say anything on the subject that I remember now.

Q. Didn't you know that he was going to your house then? A. I presumed he would go; I don't remember that he said he was going.

Q. I ask you if he didn't indicate to you, so that you understood him, that he was going then and there to your house? A.

I don't know that he indicated in any way other than by asking me if he might go, or my saying to him he might go.

Q. You said that, we will suppose. I wan't to know whether, when he made a movement to leave the room and the house, you didn't understand he was going to your house? A. Ah! I did, but did not frame any special indication he made. He and Mr. Moulton went out together, and I understood they went to my house, and afterwards I learned that they did.

Q. And when Mr. Beecher came back that night you had no further conversation with him? A. No, Sir.

Q. Did you see him again? A. I did not see him at all. He came into the parlor, and he had a conversation with Mr. Moulton that night with me.

Q. And that terminated the transaction that night between you and Mr. Beecher? A. Yes, Sir.

Q. Now, Mr. Tilton, what was the condition of Mrs. Tilton's health from the 24th of December until the 12th of January following? A. She was getting better every day from an illness.

Q. She suffered a miscarriage, did she not, on the 24th of December? A. I am not sure that was the date, but quite likely it was—somewhere about there.

Q. Her illness, whatever it was, arose from a miscarriage? A. Yes, Sir.

Q. And had she, during that preceding Summer or Autumn, had a similar illness from miscarriage? A. What, Sir?

Q. Had she, during the preceding Summer or Autumn, had an illness from a miscarriage? A. Not that I now remember.

Q. You don't remember that? A. She never had but one.

Q. That year? A. I don't think she ever had but one in her life.

Q. Of course I do not desire to inquire? A. I have never heard of any but one.

Q. Now, who attended her as physician during that time? A. My recollection is Dr. Skiles did, but I won't be certain about that.

Q. If not he, who else? A. Well, I don't remember anybody else.

Q. Do you know what nurse attended her? A. No. I don't recollect.

Q. Did you know at the time that a nurse did attend her? A. Well, I presume I did, but I don't remember now of a nurse.

Q. Now, was she seriously sick during the week from the 24th of December to the 31st of December? A. Well, Sir, on the 24th of December, if that was the date, I thought she was seriously sick, but the seriousness passed away. She got up very shortly.

Q. But shortly after when—the 24th? A. Yes, Sir; I mean to say that she was on her way to recovery; that was the serious date; she began to get better every day.

Q. Still, was she confined to her sick chamber and to her bed during that month? A. During the remainder of the month?

Q. Yes, Sir. A. I think she was; I don't remember when she first got around the house.

Q. It was at least later than the 1st of January? A. I think it was.

Q. So that she was, during this whole period, under this sickness, and confined to her room and her bed? A. She was to her room, I think; I won't say about her bed all the time.

Q. Substantially to her bed, was she not? Didn't you know about it at the time? A. I knew about it, but it is impossible for me to state the day on which she first began to walk around her room. That is the point of difficulty.

Q. I am only asking you if it didn't continue a week? A. That is exactly what I am saying I cannot tell.

Q. She was under the physician's care, was she not, during the whole of that week? A. That I don't remember, but I presume she was. She always was when she was sick.

Q. And under the care of her nurse all that week? A. I don't remember about the nurse, but I presume she was.

Mr. Evarts [To Judge Neilson]—It is four o'clock, if your Honor please.

Judge Neilson—Gentlemen will please keep seated for a moment. Will gentlemen wait a moment until the jury pass out? [To the jury]: Gentlemen, be in your seats to-morrow morning at 11 o'clock.

The Court thereupon adjourned to 11 o'clock on Tuesday.

## TWENTY-SECOND DAY'S PROCEEDINGS.

### CHRISTMAS WEEK IN 1870.

THE PLAINTIFF'S RELATIONS WITH MRS. WOODHULL AGAIN EXAMINED—HIS CONTRACTS WITH MR. BOWEN AND HIS BUSINESS COMPLICATIONS LOOKED INTO—MRS. TILTON'S CATHERINE GAUNT LETTER—THE MEMORABLE INTERVIEW OF THE PLAINTIFF AND DEFENDANT.

TUESDAY, Feb. 9, 1875.

The gloomy and mysterious events of Christmas week, 1870—the meetings of the plaintiff with Mr. Beecher, Mr. Bowen, and Mr. Moulton—were again gone over to some extent to-day, but the statements elicited did not seem to add to the character of the evidence, but only to the bulk of it. The form of the defense is gradually unfolding itself, and Mr. Evarts seems to be a master of the facts in the possession of his side. The questions asked to-day made it evident that Mr. Tilton's business troubles with Mr. Bowen and his private controversies with Mr. Beecher, which were crowded into that last week of 1870, are to be connected in the theory of the defense. The plaintiff's connection with Mrs. Woodhull is also brought out in strong colors. One of the leading questions of the counsel was whether the witness ever went to his house with Mrs. Woodhull in a carriage, left her and went into the house, getting the papers in this case, and returning and talk-

ing to her about them. Mr. Tilton denied that there ever was such an occurrence.

Mr. Evarts endeavored to connect Mr. Tilton with Mrs. Woodhull in regard to a procession in this city to the memory of Rossel, the French Communist, who was executed. The witness said that he did not know that Mrs. Woodhull was in the procession, and that he walked in the line with John Swinton. 'Did you walk all the way with him?' asked Mr. Evarts. All the answer the plaintiff made to this was to wheel quickly in his chair and inquire in the blandest tones of Mr. Swinton, who stood behind him, "was it all the way?" Mr. Tilton took occasion to eulogize Rossel highly, and told Mr. Evarts that it was an insult to suggest that the Communist was executed for having put to death the Archbishop of Paris.

Before the court adjourned for recess, Judge Neilson announced that he had received a letter saying that persons standing behind the jury-box had, within hearing of the jurymen, made remarks about the case. He commented severely upon this, and threatened summary punishment to any one caught in such an act. At the suggestion of Mr. Evarts the Judge decided that no one be allowed to stand behind the jury thereafter. After the interval for lunch, Chester Carpenter, the foreman of the jury, arose with his associates, and addressed the Court, saying that they had heard nothing improper, and that the communication to the Judge was an unjust reflection upon them. Judge Neilson replied that he was happy to know that there was no cause for complaint.

The document known as the "Catherine Gaunt letter" was made an important point at issue, and Mr. Evarts introduced it for the purpose of showing that in the copy of that letter made by Mr. Maverick and introduced into Mr. Tilton's statement to the Plymouth Investigating Committee Mr. Tilton had omitted an important part; also that in subsequent publications that part of the letter was left out. As presented to the Committee a portion of the letter was omitted, but Mr. Tilton swore that he had the original with him when he presented his statement, and subsequently a copy of *The Graphic*, with the letter printed in full, was shown. The third attempt on the part of the defense to introduce the Woodhull biography was made, and this time, after a short discussion, with partial success. This little pamphlet has been the cause of more or less debate at different times ever since Mr. Moulton took the



witness chair, and the parts which Mr. Evarts was allowed to read were listened to with great interest.

The poem "Sir Marmaduke's Musings" was introduced, and four or five verses of it read, peculiar stress being laid upon the clause about the disappointment in love. Mr. Evarts asked Mr. Tilton if he did not believe that this admitted reference to his wife would be understood by the public, and thus again "stir up" the scandal. Mr. Tilton said that if he had thought that the poem would have such an effect he would have cut off his right hand before he would have written it. After this the inquiry went back to Mrs. Woodhull and her connection with the case, Mr. Evarts asking Mr. Tilton if he could tell how it was that Mr. Beecher knew before its publication of the intended printing of the scandalous account in 1872. The witness replied that Mr. Beecher had told him that a man had called upon him with proofs of the article and that Mr. Beecher had suggested that it was an attempt at black-mail. At this point the court was adjourned.

## THE PROCEEDINGS—VERBATIM.

### MR. TILTON'S EXPERIENCE WITH MORTGAGES.

The Court met at 11 a. m., pursuant to adjournment, and Theodore Tilton was recalled and the cross-examination resumed.

Mr. Beach—Mr. Tilton desires, Sir, to make an explanation in regard to an answer he gave yesterday.

The Witness—Your Honor, I made an answer yesterday, Mr. Evarts, to a question that you put to me concerning a mortgage on my house. I find on inquiry that the circumstances are these, somewhat or slightly different from the narrative yesterday: There is a mortgage on my house of \$7,500. That is a principal mortgage. Collateral to that, not to increase the debt, however, there is a mortgage on the property in the Llewellyn Park. I was not aware of that fact until this morning.

Mr. Evarts—That is, you did not recall it? A. I was not aware of it, Sir, until it was brought to my attention this morning.

Q. Well, do you mean it is a mortgage that you did not make? A. It is a mortgage that I did not know was made. I deposited in the hands of a friend of mine, who held the mortgage on my house, the deed of this property in Llewellyn Park as collateral, that is to say, so that in case of any depreciation of property my house in Brooklyn, on being sold, should not pay the mortgage, that here might be another piece of property which might supplement that deficiency. I was not aware until this morning that a mortgage had been put upon the Llewellyn Park property.

Q. An additional mortgage to secure the same debt that the principal mortgage did, but not increasing the debt? A. Not increasing the obligation.

Q. To whom was the principal mortgage, and to whom was the collateral mortgage? A. To Mr. Franklin Woodruff.

Q. And who was the friend with whom you intrusted this discretion of giving the additional mortgage? A. Mr. Franklin Woodruff.

Q. Mr. Franklin Woodruff? A. Yes, Sir.

Q. The mortgagee was Franklin Woodruff? A. Yes, Sir; I was not aware of the inaccuracy until Mr. Woodruff called this morning.

Q. Well, I don't get it through my head yet. Mr. Woodruff was the mortgagee; that I understand. He was the person to whom you owed the money? A. Yes, Sir.

Q. And to whom the mortgage on your Livingston-st house had been made? A. Yes, Sir.

Q. And to whom this collateral or additional mortgage was made? A. Yes, Sir; as further security.

Q. Well, I understand that; there is no difficulty about that; but who executed this collateral mortgage to Mr. Woodruff? A. Well, I presume he executed it himself; that is to say—

Q. That is the part I cannot understand? A. Well, I will tell you the story, Mr. Woodruff—Mr. Evarts, I mean.

Judge Neilson—The counsel's idea is that you must have executed the mortgage though you have forgotten it.

Mr. Fullerton—I don't understand that there was any mortgage any way; it was a deposit of a deed of the Llewellyn Park property, as an equitable mortgage, if you please.

Mr. Evarts—We don't know.

Judge Neilson—That is the way of it?

The Witness—Mr. Woodruff called on me this morning and said there was an inaccuracy there, and perhaps I better correct it. I was not aware until he mentioned to me the circumstance this morning, and I confess I do not now quite understand it.

Mr. Evarts—Well, I still less.

The Witness—I have been in Court a good while, but am not yet a lawyer.

Mr. Beach—The probability is that you executed a collateral mortgage.

Mr. Evarts—Well, that, Sir—

Judge Neilson—Or deposited a deed as an equitable mortgage.

The Witness—I remember that I deposited the mortgage.

Mr. Evarts—At any rate, it would be no evidence—our conjecture.

Judge Neilson—It is a correction.

Mr. Evarts—It is a correction I agree, so far as that goes. [To the Witness]: Now, have you any idea or recollection, Mr. Tilton, of having authorized anybody else as your attorney or representative to make a mortgage on your Llewellyn property? A. No, Sir.

Q. Quite sure of that? A. I know; quite certain of that.

Q. Well, I suppose the shortest way would be to have these mortgages brought into Court. Mr. Woodruff has got them, hasn't he? A. Yes, Sir.

Q. And we can see what they are—if they are important? A. Mr. Woodruff is a very clear business man, and he will explain everything to you, Sir, in a few words.

Q. You have spoken of the value of that Llewellyn Park lot.

What did you pay for it? A. I bought it piecemeal at different times.

Q. What did you pay or it piecemeal at different times? A. My impression is that I paid about \$4,500 for a portion of it in the advertising columns of *The Independent*.

Q. That is, by advertising? A. Yes, Sir; that is to say, that a portion of what would have been my due from *The Independent* went to the payment of advertising in that journal, those advertisements being inserted by the gentleman of whom I bought the property.

Q. Yes; in other words you— A. And an acre of the property was made to me as a gift by the same man.

Q. \$4,500 was for the advertisements, and was not the rest for the editorials about the property? A. No, Sir; I never sold my editorials, Sir.

Q. Well, who was this gentleman that made you this gift? A. Mr. Llewellyn Hascall.

Q. The founder and promoter of that enterprise? A. The founder of the park, an old friend of mine; yes, Sir. Many years ago he gave me an acre of ground there to tempt me out there to live, and afterwards bought some other.

Q. Well, no matter. So that you did not pay any cash for it? A. Yes, Sir; I paid cash for a portion of it. I loaned him some money when he was in tight place: I have forgotten how much; \$600 I believe.

Q. Yes. A. And I had some land afterward, so that finally I had three acres instead of one.

Q. Now, don't you know now, since the matter was recalled to you by Mr. Woodruff, that there is a mortgage on record on that Llewellyn Park property? A. I only know what he mentioned to me this morning, Sir. I had a very hurried interview with him, and I don't understand the legal transactions; but Mr. Woodruff will explain it to you, Sir.

#### PURPOSE OF THE CONFESSION EXPLAINED.

Q. Yes, very likely. I am not certain that I am right, Mr. Tilton [looking over some memorandums], as to whether your contract made on the 20th or about the 20th of December, with Mr. Bowen, so far as respected *The Independent*, was a five years or a two years' contract? A. Well, Sir, I don't possess those papers. I remember very distinctly that the contract with *The Union* was five years.

Q. Yes, that I understand. A. I don't remember so distinctly how long the contract with *The Independent* was; my impression is, two or three years; I won't be certain, though.

Q. Now, let me recall you to that. Wasn't it two years, on your best recollection now? A. I should not say distinctly, Sir; I don't know; perhaps it was, perhaps it was; still I won't be accurate.

Q. Now, Sir, when you gave to Mr. Moulton, on the night of the 30th December, this letter in your wife's handwriting, or this document in your wife's handwriting, you say that you thought that if Mr. Beecher interposed objections to coming, that that would induce him to come, didn't you? A. Words to that effect; yes, Sir.

Q. And that it was not to be used unless necessary for that purpose? A. I didn't say that exactly, Sir. I said that I

didn't wish Mr. Moulton himself to break that subject to Mr. Beecher unless it was necessary.

Q. I mean used by Mr. Moulton? A. Yes, Sir.

Q. Not to be used by Mr. Moulton on that occasion? A. No, Sir.

Q. With Mr. Beecher, unless it proved necessary? A. No, Sir; that was my intent.

Q. Now, you thought that that note would fetch Mr. Beecher to this interview, didn't you? A. I knew it would; yes, Sir.

Q. You knew it would? A. Yes, Sir.

Q. Now, Mr. Tilton, wasn't it got for that purpose? A. For what purpose?

Q. To fetch Mr. Beecher to that interview? A. No, Sir; it was got for the purpose of being the basis on which I, as an honorable man, maintaining my self-respect, could hold that interview with him.

Q. Very well; when did it first occur to you to use it for that purpose, of fetching Mr. Beecher? A. Will you state your question again, if you please?

Q. When did it first occur to you to use it for the purpose of fetching Mr. Beecher to the interview? A. On the day in which the interview was held. It was written the day before.

Q. No matter; we won't go away from it. My question is when did it occur to you to use that paper for the purpose of fetching Mr. Beecher? A. That thought never occurred to me, I think, until Mr. Moulton suggested, a few minutes before going, that possibly he might not come.

Q. Well, that is your best recollection, is it? A. Yes, Sir.

Q. But it was a sudden use of the paper? A. The object—I don't understand your question, Mr. Evarts.

Q. That it was a sudden use of the paper not premeditated? A. By Mr. Moulton?

Q. By you? A. I designed to use the paper in my interview with Mr. Beecher.

Q. That I understand, but the using it to fetch Mr. Beecher was a sudden and not a premeditated use? A. It was a spontaneous impulse; yes, Sir.

Q. Now, Mr. Tilton, I understand you to have said in your direct examination that the motive and object of this interview with Mr. Beecher had solely relation to the protection of the relations between your wife and Mr. Beecher being brought out into publicity or discussion by reason of, or in connection with, any controversy that might arise between Mr. Bowen and Mr. Beecher? A. Well, Sir, if I understand your question, that was the purport.

Q. That was? A. Yes, Sir; that is to say, the object of that interview was to protect Elizabeth.

Q. Yes. Well, and in connection with the fear of publicity growing out of a controversy or agitation between Mr. Bowen and Mr. Beecher? A. Yes, Sir.

Q. Now, that was it? A. Yes, Sir.

Q. Were you afraid? A. No, Sir.

Q. Wait a moment; I haven't got through with the question. [Laughter.] As a naked question, I dare say you are never afraid, but that is not my question. Were you afraid— A. No, Sir; oh, I beg your pardon; I thought—

Q. Now, I warned you, Mr. Tilton, it was not my whole



question. A. Well, Sir, I accept your warning, Sir; I am sorry you are disconcerted.

Judge Neilson—Wait till the question is put, Mr. Tilton, and then answer it.

Q. Were you afraid that Mr. Beecher would give publicity to these supposed relations? A. Oh, no, Sir.

Q. What? A. No, Sir.

Q. Not the least? A. Not at all.

#### THE HELPING HAND OF MR. MOULTON.

Q. Now, Sir, you received late, you say, on the night of the 31st, from Mr. Bowen, notice of your dismissal—of the termination of your contracts. That notice is not here—not to be found. Did that notice include also a statement that he was ready to pay or settle all demands, and wished to do so? A. I don't remember as to that, Sir; very brief letter; note, as I recollect it. My impression is that Mr. Moulton had those notes; I won't be certain about it.

Mr. Evarts—We should like it if we could get it; if any of you gentlemen can give it to us, we, of course, will not inquire about its contents.

Mr. Morris—I haven't got it.

Mr. Evarts—We have understood before that it could not be had; isn't that so, Mr. Morris?

Mr. Morris—Yes, Sir.

Q. Wasn't the notification that you received from Bowen that your engagement with *The Independent* and *The Union* would then and there terminate, and that he was ready to settle with you in full of all demands? A. I don't remember the contents of his note; all I remember about it now, at this distance of time, is that it was a brief note—I think two notes—one as publisher of *The Independent* and one as president of *The Brooklyn Union Association*. I gave them to Mr. Moulton; that is all I recollect about that.

Q. Can you say now that they did or did not contain this latter clause, that he was ready to settle with you in full of all demands? A. I have given you all the recollection that I have touching the document or note at present.

Q. Well, you can't say? A. Not at present; no, Sir.

Q. You will not say that they did not? A. No, Sir.

Q. Now, Sir, at what hour in the evening did you receive that notification? A. I should think about nine o'clock, or half past; somewhere in the middle of the evening.

Q. That was Saturday night? A. It was the last night of the year; yes, it was Saturday night.

Q. Now, you received it at your house, didn't you? A. Yes, Sir.

Q. And what did you do with it, or about it, after receiving it? A. Went around to Mr. Moulton's house with it.

Q. Had you seen him before that evening? A. Had I seen him before that evening?

Q. Yes? A. Why, Sir, I had known him for fifteen years.

Q. No; had you seen him that evening before? A. Oh, I think not, Sir.

Q. You think you hadn't seen him? A. I don't remember that I had seen him; my present impression is that I had not; I think I had been at home all the evening.

Q. And your occasion and errand was from the receipt of this from Mr. Bowen, wasn't it? A. Yes, Sir; I went around to talk to him about it.

Q. Where did you see him then? A. Mr. Moulton was not at home.

Q. Well, what happened then? A. I sat there at his writing-desk and began a reply to Bowen's letter.

Q. Well, when did he come in? A. Mr. Moulton came in from Mr. Beecher's house a little later in the evening.

Q. Well, he came in at any rate? A. Yes, Sir.

Q. He came in? A. Yes.

#### THE SOOTHING INFLUENCE OF CHURCH CHIMES SOUGHT.

Q. And then, did you continue an interview there, or did you go out into the streets? A. We continued an interview there, and I think that later in the evening, as the year was waning, and the bells of St. Ann's began to ring, I think we went out in the street to listen to them; that is my recollection.

Q. Well, do you recollect that you went out into the street? A. Yes, Sir.

Q. Now, Sir, when you first saw Moulton at his house, didn't you invite him out of doors? A. When I first saw him?

Q. That evening, then? A. Why, no; I didn't.

Q. Didn't invite him out of doors? A. I did not immediately: he invited me to read the papers which he had got from Mr. Beecher first.

Judge Neilson—From Mr. Bowen, you mean?

The Witness—No, Sir; Mr. Beecher. He had just brought home the retraction.

Q. Now, do you remember how many hours you walked the streets that night with Mr. Moulton? A. Well, I don't think we walked a great many hours, Sir.

Q. Well, give us how many about? A. My recollection is that just as the year was stepping across the bridge into the new one, we went out to hear the chimes of St. Ann's.

Q. Well, when the chimes were over did you separate immediately? A. I don't remember whether we did immediately, Sir.

Q. Didn't you have a prolonged interview in the street, proposed by yourself to be in the streets, which occupied one or two hours? A. I had a walk with Mr. Moulton late at night; I had been greatly aroused by the information which he had brought to me from Mr. Beecher's, and late in the evening, as my habit is, I walked—he walked with me—and the New Year overtook us there.

Q. That is all you can say about it? A. That is all I can say.

Q. You cannot say whether it was two hours you walked together that Winter night? A. No, I can't say.

Q. And you are quite certain that you did not take him out into the streets at the first of your call that night? A. No, Sir, because at the first of my call that night—

Q. No matter about the reason; are you certain? A. He was not there at the first; he came in afterward.

Q. Are you certain that you did not take him out as soon as he came in and you saw him? A. Yes, Sir; I think so.

Q. You think so? A. Because he had a message to communicate to me.

Q. I don't care what the reasons are; are you certain that you did not take him out? Couldn't he communicate his message to you in the street as well as any other talk? A. I think quite likely he might have done that; that is to say, he had the ability to do it.

Q. Yes, Sir; now, what is your recollection? Did you take him out into the street for this interview of yours with him from the beginning of your seeing him that night? A. I don't think that I did, Sir; I have an indistinct recollection that I went home hurriedly to inform Elizabeth of the return of the papers, and came back for Mr. Moulton—still I won't be positive about that—and that then we walked the streets; I won't be certain of that.

Q. Now, Sir, New Year's was Sunday; when did you prepare—begin to prepare—the letter to Mr. Bowen of the date of the 1st of January? A. I began to prepare it the night before.

Q. That is the night of the 31st? A. Yes, Sir.

Q. And when did you finish it? A. Well, Sir; I think it was finished the next day with the exception of some revisions which were incorporated into it after consulting with Mr. Jeremiah Robinson, Franklin—no Mr. Moulton, Gordon L. Ford and others.

Q. Now, Sir, there is nothing in that letter about Mr. Beecher's relations to you or your wife? A. No, Sir; all that matter was designedly omitted.

Q. By you? A. Yes, Sir.

Q. And did these gentlemen advise you to leave out any such matter? A. Mr. Robinson advised me to carry myself out of the case entirely; that was his expression.

Q. Well I mean about this letter; I am not going into any general conversation; they gave you some advice about this letter? A. Yes, Sir; Mr. Robinson in particular.

Q. Now, did they in the preparation of that letter, and while that was going on, advise you not to have any of the relations between Mr. Beecher and your wife in that letter? A. I had written the letter and submitted it to Mr. Robinson, and his suggestion to me was to keep myself out of the letter—my own case out of the letter.

#### THE RESTRAINING INFLUENCE OF MR. TILTON'S FRIENDS.

Q. But you were out of it—you had finished the letter? A. I was somewhat in it, Sir.

Q. Do you mean you altered the letter afterwards? A. I did, in obedience to their suggestions afterwards.

Q. Ah! Then you had meditated putting them in. A. No, Sir; my letter was too personal and fiery as I first wrote it. Mr. Robinson said to be calm and judicious, and so I took out certain phrases of the letter. I do not know what they were. He said if my letter was published, it would have a better effect if it was perfectly calm and judicious, and I thought his advice was good,

and so I omitted certain phrases which I thought were too intemperate and wrathful.

Q. As towards Bowen? A. Yes, Sir, as towards Bowen; the idea being that there was something in the letter.

Mr. Evarts—No matter about that. This is a cross-examination.

Mr. Tilton—[continuing his answer]: That would reveal something hidden.

Q. No matter about your idea. Now, you showed it to Mr. Ford? A. Yes, Sir.

Q. In the state it was when you showed it to Mr. Robinson? A. No, Sir; Mr. Ford saw it, I think, on Sunday morning—New Year's day; I was in the act of composing it, I think, and he came upon me in my parlor when I was writing it.

Q. And you showed it to him? A. I read it to him; at least I read to him all there was of it then, in the state in which it was then.

Q. Was not the whole of it finished? A. I showed him all there was of it.

Q. Was not the whole of it there? A. No, Sir; there was not; that is, the letter was not in its completed state until certainly, January the 2d.

Q. Have you not told us that the whole of the changes were there, that you took something out? I want to know when you showed it to him whether it had all in it that ever was in it? A. Mr. Ford? I do not remember precisely the condition that that letter was in on New Year's morning, when I showed it to him; I think the essence of it was the same as it is now, only the phraseology may have been a little indiscreet.

Q. Did he advise striking out anything? A. No, Sir; he did not give me any advice whatever; I didn't ask him for any advice; I simply read it to him.

Q. Did you understand Mr. Ford's relations to one of the ladies referred to in that letter? A. I do not understand any relations that Mr. Ford had to any lady except his wife.

Q. I am not speaking of improper relations; I am speaking of relations?

Mr. Beach—He is not speaking of immoral relations.

The Witness—Please to ask your question again?

Mr. Evarts—You say you do not. You are not aware of his relations as trustee to one of the ladies referred to in that letter to Mr. Bowen?

Mr. Beach—I do not understand that any specific lady is named in the letter.

Mr. Evarts—I do not say named; I say referred to.

The Witness—I do not understand your question.

Q. Did you know that Mr. Bowen stood in the relation of trustee to one of the ladies referred to in your letter to Mr. Bowen? A. I did not, Sir, and I do not know it yet. I never heard of any such fact.

Q. At all events, Mr. Ford did not advise you to leave out a part of the letter? A. I don't think Mr. Ford gave me any advice on that subject.

Q. I thought that you left out of this letter all reference to your wife's affairs on the advice of Mr. Robinson, Mr. Ford and some others? A. No, Sir; I wrote it, and I said that Mr. Robinson had advised me.



Mr. Morris—He did not say that he left them out on their suggestion, because he did not state there was anything referring to his wife, or anything of that kind.

Mr. Evarts—That would be “taking” them out; I said “leave” them out.

Judge Neilson—I got the impression from the witness that it was his original purpose to leave out all reference to his wife.

The Witness—There was no word of disparagement of my wife in that letter.

Q. I agree to that. We have it here? A. I mean in the original draft—the original design.

Q. Have you not said that you left out any connection of your wife's affairs with the concurring advice of these gentlemen? A. I said nothing of the kind.

Q. What did you say? A. I said this: that I had advised with Mr. Robinson about that letter, who instructed me to make it more calm and temperate and to carry myself out of it—my personalities—my fire and feeling; I never for one moment thought of introducing my wife into this letter with any disparagement; there never was any allusion to her in it.

Q. Now, Sir, in your direct examination did you not say this [referring to this letter and the preparation of it], that “acting under a sense of duty I had written a letter to Mr. Bowen, reciting all the facts; that I had written it very carefully, taking the advice of Jeremiah P. Robinson and Mr. Moulton and Mr. Gordon L. Ford, and that acting upon their advice, and particularly upon the advice of the oldest of these gentlemen, Mr. Robinson, I had studiously kept out of this letter all grounds of difference between Mr. Beecher and myself?” A. Yes, Sir, I said something of that kind.

Q. Very well? A. The conversation I had with Mr. Ford, I think, was about the phraseology of it.

Q. That is true as you stated it in your direct examination? A. Yes, Sir; but I did not discuss with these gentlemen Mr. Beecher's affairs with me.

Q. No matter—this is a cross-examination? A. Yes, Sir,

Q. Now, when did you hand that paper—that Bowen letter—to Mr. Moulton? A. I don't remember the day. It was one of the very first days of January—as soon as it was completed and a clean copy made of it.

Q. Now, upon giving that letter to Mr. Moulton, did you express a wish or desire to have your affairs with Mr. Bowen speedily settled or closed? A. No, Sir; I expressed that desire—

Q. No matter; you say you did not at this time. A. I did not say that I didn't at this time; I did at this time, but not in connection with that letter.

Q. At this interview? A. I do not remember the interview; I saw him about every day at that time; I gave Mr. Moulton a specific note authorizing him to settle my affairs.

Q. That is not what I am talking about. That is in evidence already. A. Yes, Sir.

Q. Did you on giving that letter to Mr. Moulton explain to him the desire that your pecuniary affairs (not using that phrase necessarily, but referring to them) should be speedily settled with Mr. Bowen. A. No, Sir; I do not think that Mr. Moul-

ton had this copy of the letter until a day or two after the authorization.

Q. You do not think you told him so? A. I do not say I did not; I told Mr. Moulton that I wanted my affairs settled, and I gave him a note to Mr. Bowen authorizing him to settle.

Q. You did tell him that you wanted your affairs settled up as soon as might be? A. Yes, Sir; that was the 2d of January that I gave him the note; that will speak for itself.

Q. You gave him the letter to Mr. Bowen, I suppose, at the same time? A. My impression is that this letter was not clearly copied until the 3d or 4th—perhaps the 3d.

Q. Did you—at that time and at that conversation in which you gave him that letter, and at which you expressed the desire to have the matter speedily settled—ask him (Moulton) to be one of the arbitrators to close this? A. I did, Sir. I made him the request; whether it was in the act of giving him the letter I do not remember.

Q. At that stage of the business and before you made him an attorney, of course? A. Mr. Moulton is not an attorney.

Mr. Morris—That is argumentative.

Mr. Evarts—I know it is, and it is quite within my privilege.

Mr. Morris—I think not.

Mr. Evarts—Did you name the other arbitrators at that time, or either of them? A. What other arbitrators?

Q. Of the three. You asked him to be one of three arbitrators? A. I don't think I had any right to name any of the others.

Q. I did not ask you what you had a right to do; I asked you what you did? A. I don't remember the name of the three; I did subsequently select three out of the list presented by Mr. Bowen.

Q. That is quite another matter; but you asked him to be one of three arbitrators. Did he not on that request of yours desire you to commit your case to his care? A. Yes, Sir; he did.

Q. He did? A. I don't know whether it was immediately consequent upon that request; but he desired me to submit it to him.

Q. Do you think now that it was not consequent upon that request? A. I think about that time.

Q. It was before you gave him the power? A. I gave him the power.

Q. After that suggestion? A. In consequence of his request—yes, Sir.

Q. [Handing paper to witness.] That is the paper that you gave him, is it not? A. This is a paper in Mr. Moulton's handwriting; it seems to be a copy of a letter which I gave him; I take it for granted that the copy is accurate.

Mr. Evarts—This is in evidence, is it not?

Mr. Fallerton—Let me see.

Mr. Evarts—Mr. Shearman, did you not give me this as an exhibit?

Mr. Shearman—It came in the papers as “Exhibit D, 4.” [Looking at it.] Yes; that is the only one we have had; it is Mr. Moulton's copy.

Mr. Evarts—Has it been marked?

Mr. Shearman—Yes; it is marked “D, 4.”

Mr. Everts—Where?

Mr. Shearman—It must have been marked on the envelope; the stenographer had better mark it now. He marked it on the envelope instead of on the paper.

Mr. Everts—But it is in evidence.

Mr. Fullerton—It is already marked.

Mr. Everts—It is supposed to be marked, but the mark is not on it.

[THE TRIBUNE stenographer here marked the paper "Exhibit D, 4."]

Q. Now, Sir; did you place in Mr. Moulton's hands, at that time, anything but this letter to Mr. Bowen, of the 18th of January? [Turning to Mr. Shearman; What is that Exhibit?] No matter. Did you place in Mr. Moulton's hands, at that time, anything but this authorization and the letter to Bowen?

Mr. Beach—That implies an assumption, I think, that he placed both papers in his hands at that time.

Mr. Everts—I do not mean to reconsider what he said. Did he place anything?

Judge Neilson—You do not mean to imply that they were both handed to him together?

Mr. Everts—No, Sir; that is not my question.

Mr. Beach—The question implies that.

Mr. Everts—No; you handed that to him?

The Witness—Mr. Everts, if you wish to know the papers that I put into Mr. Moulton's hands, I can tell you.

Mr. Everts—At that time, in reference to Mr. Bowen?

The Witness—Yes, I will tell you. I gave him three papers—one, a little note, authorizing Mr. Moulton to settle my affairs with him; the other, a copy of my contract with *The Independent*, and the other a copy of my contract with *The Brooklyn Union*; these were the three papers that I put into Mr. Moulton's hands. Further than that, I do not know that I put anything into his hands.

Q. Did you give him the Bowen letter that you testified to? A. Yes; but I did not put it into his hands; I sent it down to Mr. Bowen; but he declined to take it to Mr. Bowen.

Q. What? A. He did not want to take it to Mr. Bowen.

Q. Then you offered it to him? A. My first proposition about that paper was to publish it; Mr. Moulton did not wish it published; I then wanted him to deliver it to Mr. Bowen; he took charge of it.

Q. And he did take charge of it? A. Yes, Sir.

Q. And you gave it to him? A. What do you mean by "giving it to him?"—that I made over a deed of it?

Q. Handed it to him? A. Yes, Sir; I handed it to him; that is the only way that he could have got it.

Mr. Everts—I think so, unless he ravished it. [Laughter.]

The Witness—He read it to Mr. Bowen about the 8th or 10th of January.

Q. Very well; no matter. There has been testimony to that purpose, I believe; something about that. Now, Sir, when did you first learn from Mr. Moulton, or anybody else, that Mr. Bowen did not pay that money? A. I do not remember the exact date of Mr. Moulton's first interview with Mr. Bowen; some time early in January.

Q. Immediately after that, was it, that he made some report to you about it? A. Yes, Sir, very short'y.

Q. And that report at least included the fact that Mr. Bowen refused to pay? A. No, Sir.

Q. Well, then, what did it include? A. I think the first report that came from Mr. Bowen was the payment of \$4,000 to me, which he owed me upon some notes I held; that is my best recollection, but I will not be accurate as to the time. Mr. Bowen wanted an arbitration—wanted not only a settlement of our pecuniary matters, but he wanted a settlement of other matters.

Q. I did not ask for that? A. What is it that you ask for, Mr. Everts?

Q. I ask when you first received notice, through Mr. Moulton, from Mr. Bowen that he did not pay these liquidated damages? A. I do not know the date, but it was very early in January.

Q. Now, did you also learn that he also wanted an arbitration? A. Yes, Sir; we both wanted it.

Q. Both wanted an arbitration? A. Yes, Sir; Mr. Moulton forbade it.

Q. That was at an early stage of the matter? A. Yes, Sir.

Q. And Mr. Moulton prohibited it? A. Yes, Sir.

Q. Now, the actual arbitration was not held until somewhere in the Spring—April, I think—of 1872, was it? A. It was held on the 2d of April, 1872, I think.

Q. Now, you never saw Mr. Bowen, I suppose, personally about these matters at all? A. I do not remember that I exchanged a word with Mr. Bowen from the day that I left him in *The Union* office in 1870 until the 2d of April, 1872; if I did it was an accidental meeting in the street.

Q. I don't know anything about that; that is your view of the matter. From that break in your employment until the time he paid you your money you had had no intercourse with him? A. I have an indistinct recollection that on New Year's Day I met him at somebody's house.

Q. But that was casually, if it occurred at all? A. Yes, Sir.

Q. Now, you have stated, I think, in your direct examination that Mrs. Tilton was informed of (I don't know whether you used the word "trouble" or "business affairs") as they went on, have you not? A. What business affairs?

Q. With Bowen? A. What week do you allude to?

Q. That week in December? A. There are four weeks in December.

Q. You have no idea of what week I am referring to? A. No, Sir; I have not; I suppose you are referring to the early part of December.

Q. I will tell you what week I am referring to—from the 24th to the 31st of December? A. I had no business affairs with Mr. Bowen during that week.

Q. Had you an interview with Mr. Bowen during that week? A. I had an interview with Mr. Bowen on the 26th of December.

Q. And another on the 27th or 28th? A. Yes, Sir; not about business matters; quite different from business matters; matters of scandal and the expulsion of Mr. Beecher from his pulpit.



## MRS. TILTON'S MEDIATION.

Q. Yes, we have heard exactly about that. Now, have you not on your direct examination said that Mrs. Tilton was informed of these occurrences? A. Yes, Sir; but you have described them as "business" occurrences.

Q. I consider them business occurrences in my view of it. A. But I did not interpret to Mrs. Tilton your views of the case, Mr. Evarts.

Q. No, not at all. And it was in consequence of this information, as I understood you on the direct examination, that she felt solicitude to have some intercourse between you and Mr. Beecher? A. Well, Sir; my answer to that question is this—

Q. I don't ask for any conversation, I only ask whether you have not said on your direct examination, that in consequence of this threatening controversy between Mr. Bowen and Mr. Beecher, your wife felt anxiety; and that that led to your interview with Mr. Bowen? A. Mrs. Tilton thought if Mr. Bowen and I drove Mr. Beecher out of his pulpit, all the world would know the reason, and that would convict her.

Q. I didn't ask you that. I asked you if you did not say that on your direct examination? A. I stated the substance of that.

Q. That it was in consequence of your wife knowing of the threatened trouble between Mr. Bowen and Mr. Beecher that she was solicitous you should have an interview with Mr. Bowen? A. Yes; her fear and anxiety; that was it.

Q. Now, you went on and you came to the transactions of the 7th of February, where three letters were written and communicated to the persons to whom they were addressed; after that, as I understand, there was no trouble of any kind or concern in reference to any publicity until the Woodhull card of May 22d, 1871; is that so? A. That was the first threat that was published. Mrs. Woodhull published a card, dated May 22d, 1871, threatening to expose these stories.

Q. We have got that in evidence and we do not need to repeat it. That was the first, wasn't it? A. The first one I knew anything of.

Q. I am taking your knowledge. Now, during how much of that time had Mr. Moulton—this interval between Feb. 7th and this 22d of May—how long a part of the time had Mr. Moulton been absent? A. Mr. Moulton went to Florida in that interval; I do not remember exactly the date of his going and returning; I should think he was gone about six weeks.

Q. And before his leaving that serious illness occurred, didn't it? A. Yes, Sir.

Q. And he went, probably, on account of his health? A. Yes, Sir.

Q. So that he had been shut out pretty much all the while from the date of his—how long did that sickness continue before he went South? A. My impression is, he was sick about—I think the culmination of his sickness was about the middle of January, and that it was a very slow recovery.

Q. So that from the middle of January until his return from the South, he was pretty much shut up from any activity in any matter, wasn't he? A. He was not shut up when he was on his way to the South.

Q. Shut out from any activity in any matters here? His

absence and his sickness covered pretty much from the middle of January until his return from the South? A. Yes, Sir; but that is quite another thing from his being "shut out." Mr. Moulton carried on his business in his sick-bed, like a general in his tent. He never was "shut out" from any activity.

Q. But he didn't go about much? A. No, Sir; not when he was confined to his room.

Mr. Evarts—During that period he did not, of course.

## WHO GAVE MRS. WOODHULL THE STORY.

Q. Now, Sir, as I understand the matter, all that had passed between you and Mr. Moulton and Mr. Beecher regarding any relations with your wife during this period were confidential, and for the purpose of being kept secret and assisting in keeping secret whatever those relations were? A. Yes, Sir; and that was the design of Mr. Moulton's labors in the matter.

Q. And the conferences and actions towards that design were not intended to be made public, were they? A. Not at all, Sir.

Q. Not in the least. Now, Sir, did you ever suspect Mr. Beecher of having communicated to Mrs. Woodhull the basis of her threat of May 22d? A. No, Sir, nor to any other person.

Q. You never suspected him? A. Not at all, Sir.

Q. That I suppose; it may be inferred from your views of this case. Did you ever suspect Mr. Moulton? A. No, Sir.

Q. —of communicating to Mrs. Woodhull any of these matters? A. I answered that question before you asked it.

Mr. Evarts—Well, you know what the Scriptures say about a man that answers a question before it is asked?

The Witness—Mr. Moulton is above suspicion.

Mr. Evarts—You say you did not? A. I did not.

Q. I understand you, then, that when you first went to see Mrs. Woodhull on the appearance of that card, which was only a premonition, she then gave you substantially all the matters that she published in the Fall of 1872? A. Yes, Sir; all the horrid incidents, and more besides. She didn't connect them with various persons, as she did then.

Q. I gathered from your examination that there was nothing that she knew in the Fall of 1872, or professed to know, that she didn't know or profess to know in May, 1871? A. Well, for instance, she didn't tell me in May, 1871, that she had carried the proof of her Steinway Hall speech into Mr. Beecher's study, and had there given it to him. That was the subsequent fact. What she told me was in the various, vivid and extraordinary instances of criminal relationship which existed.

Q. And the pistol scene, and all that? A. Yes, Sir; not as it happened, but as it didn't happen.

Q. Well, as she stated it she told it to you then? A. She told me—

Q. Now, no matter; I don't care what she told you. I only want to know whether I am right in understanding your direct examination. A. What is your understanding of it?

Q. This: that all the matters that related in her article of 1872 to Mr. Beecher's relations to your wife, and to any operations or movements of yourself or Mr. Moulton with Mr. Beecher in the same connection—all that was contained in her article of 1872 tha

had any bearing and relation she mentioned to you in May, 1871? A. I won't undertake to say that she mentioned in May, 1871, every identical particular which she afterwards put into her story of November, 1872. I do undertake to say that all the extravagant incidents of that story of 1872, namely—well, I won't rehearse them.

Mr. Evarts—Well, no matter.

The Witness—They were spread out in a very violent and energetic speech by her to me in May, 1871.

Mr. Evarts—That is what I understood.

The Witness—But when she told me her story in May, it was unconnected with the various persons, ladies and gentlemen.

Mr. Evarts—Other people? A. Yes, Sir, whom she first named as her authorities.

Mr. Evarts—Well, we don't care about that. I am not talking about that. At that time, in May, 1871, she didn't give you any authority? A. No, Sir, I asked her and she declined to give me any.

Mr. Evarts—Now, you say you read that note with a shudder? A. Yes, Sir.

Q. And had you any doubt when you read it that that reference to a distinguished teacher and the wife of another distinguished teacher would be understood by the public in Brooklyn as relating to Mr. Beecher? A. No, Sir, I had not any expectation; I had not any thought that the public would understand it; but when she put it into my hand, and I read it, I swiftly interpreted it to myself, and as it contained a threat of exposure and publication I shuddered from head to foot in contemplation of it.

Q. It didn't strike you, then, that that publication would risk the public having an idea that your family and Mr. Beecher's were referred to by it? A. No, Sir, not the card itself; but the card itself contained a threat to expose those facts dimly hinted at in it, and it was that threatened publication which would have carried dismay through our household.

Q. Exactly; I only wanted to know what the state of your mind was. You considered, then, that the publication of Mrs. Woodhull, so far as it stated that she knew of a case, &c., unconnected with any threat of giving more particulars? A. Yes, Sir.

Q. You thought that would be a harmless publication in these communities, did you? A. No, Sir; I didn't think it would be a harmless communication, but I didn't suppose, if the card had stood just at that point, that the great public would have imagined Mr. Beecher and Mrs. Tilton to be meant.

Q. You didn't think anybody in Brooklyn, where there are so many teachers, would have thought which ones of them they were? A. There would have been a small, narrow circle which would have known, but the great public would not have known.

Q. Does not a small narrow circle in scandal tend to become a large, wide circle? A. I think it does; yes, Sir.

Q. Now, Mr. Tilton, have you any doubt that that publication stopping, as I have suggested, and as you have accepted, with that announcement of the fact, that she knew that that of itself carried danger of scandal concerning your family and Mr. Beecher, whether there would be any truth or falsehood in it? A. Why, Sir, inasmuch as a certain number of people must

have known to what it referred, there would have been to that extent danger; still, I don't think that that card of itself would have multiplied the number of people who did know; it was the threat of the publication which the card contained that was the menace of evil.

Q. And the actual publication of that, without the particulars, you did not consider as conveying any spark of scandal in these communities? A. Oh, I would not say it was not a spark; I think any such publication would be a spark.

MRS. MORSE DECLARED THE TATTLER.

Q. Well, I suppose so. Very well. Now, as you did not suspect Mr. Beecher or Mr. Moulton of having informed Mrs. Woodhull, how did you imagine she had got her information? A. Through the open gate of the lips of Mrs. Nathan B. Morse.

Q. That was your theory? A. Yes, Sir; not that it went from Mrs. Morse directly to Mrs. Woodhull, but that it went through many mouths. Mrs. Morse was in the habit of saying that I made such and such charges.

Q. No matter; I didn't ask you that. A. And they got to Mrs. Woodhull's ears.

Q. I didn't ask you a word about that. You suspected, then, that what Mrs. Morse had publicly said— A. Privately said.

Q. Well, privately said with the publicity that had reached Mrs. Woodhull, because you don't mean that she whispered it in Mrs. Woodhull's ears? A. No, Sir; she didn't whisper it in any one's ears; she spoke it loud.

Q. Well, that is what I call public. You thought that was the source of Mrs. Woodhull's information? A. Yes, Sir; the original source, that the stories went from her. They certainly did not go from me, nor from Mr. Moulton, nor from Mr. Beecher.

Q. And I understand you to say that neither of you had communicated any of the occurrences during this confidential intercourse in the early month of 1871 and the close of 1872? A. What is that you understand?

Q. That neither you, nor Mr. Moulton, nor Mr. Beecher, had communicated those stages and conferences that took place between you three to anybody? A. I cannot speak for Mr. Beecher or for Mr. Moulton; I spoke to a few of my friends about certain of the maneuvers that had been made.

Q. During this period? A. Yes, Sir; for instance, I said to a number of friends that Mr. Beecher had gone and got a retraction.

Mr. Evarts—I won't take any instance; this is a cross-examination.

The Witness—Don't make it more cross than is necessary. [Laughter.]

Mr. Evarts—No, it is mild in manner, no doubt.

The Witness—I don't think it is.

Mr. Evarts—But it is an examination that authorizes no spontaneous statements.

Judge Neilson—[To the witness.] The practice is to answer questions simply.

Mr. Evarts—Answer the question; that is my right, and you have a right to stop then. I have a right to limit my question, and you have a right to stop. Now, you had then, during that



interval before May, 1871, told more or less of confidential friends, had you? A. Yes, Sir.

Q. Of the steps and stages of the confidential communications? A. Yes, Sir, I had.

MR. TILTON'S ACTUAL DISPOSITION TOWARDS MR. BEECHER.

Q. Very well? A. I cannot answer whether Mr. Beecher had, or whether Mr. Moulton had, but I had.

Q. That you can answer for? A. Yes, Sir; and I undertook to tell you that when you said you understood to the contrary.

Q. Well, I think I did understand to the contrary. I now understand it both ways.

The Witness—But understand that, in communicating that, I never spoke to Mrs. Tilton's disparagement. I had never been very particularly anxious to save Mr. Beecher.

Q. You were not? A. No, Sir.

Q. You were not anxious to save Mr. Beecher? A. No, Sir.

Q. Although it led to disclosures about your wife? A. No, Sir; the only protection I put over Mr. Beecher was just so far as it was necessary to protect Mrs. Tilton; and if it had not been necessary to protect Mrs. Tilton I should have allowed Mr. Beecher to go to his destruction four years ago.

Mr. Evarts—That I understand to be your disposition.

The Witness—Yes, Sir; I don't wish to disguise it.

Mr. Evarts—It would be difficult if you did; that we agree about. But, still, all the motive for going to Mr. Beecher was solicitude to protect Mrs. Tilton? A. Yes, Sir.

Q. And yet, after that, you did not scruple to tell as much as you chose of the confidential matters between you and Mr. Beecher and Mr. Moulton? A. I never had a confidence with Henry Ward Beecher in my life.

Q. Will you answer my question now? A. Yes, Sir.

Mr. Evarts—[To THE TRIBUNE stenographer.] Read the question.

The Witness—I have answered it in that statement.

[THE TRIBUNE stenographer read the question to the witness.]

Mr. Beach—The answer is proper.

Judge Neilson—It is proper so far. He can add whether he scrupled.

Mr. Evarts—Is that all the answer you can make? A. Well, Sir, I think that is a very comprehensive answer.

Mr. Evarts—Well, there may be a difference of opinion about that.

Mr. Fullerton—It is not worth while to explain that.

Mr. Evarts—No, we won't debate that. [To the witness.] I understand you to say, that notwithstanding the whole motive of this interview of the 30th, and of what followed, it was to protect your wife, and not with love to Mr. Beecher; yet you didn't scruple immediately after, or while they were going on, to disclose as much as you pleased of what was going on? A. Yes, Sir; I should—

Mr. Evarts—Very well, that is enough.

Mr. Beach—No, that is not enough.

The Witness—I mean to say, Mr. Evarts, that I was under no obligation to keep any secret. I had kept the transaction

secret on my wife's account, but not from any obligation that I was under to the Rev. Henry Ward Beecher.

Q. I have not asked you anything about that. I asked you whether you kept it secret? A. I did from any persons except from the few who knew the essential facts in the case.

Q. You did except from those to whom you told it? A. Yes, Sir; except from those to whom I had originally told the crime.

Q. But you didn't scruple to tell to whom you pleased, what you pleased, concerning these transactions while they were going on?

Judge Neilson [to the witness]—Now, say you did or did not?

The Witness—Must I answer, your Honor, as to the scruple which I had?

Judge Neilson—Whether you did or did not, and then explain, if you wish.

The Witness—I have told you, Mr. Evarts, to whom I spoke.

Mr. Evarts—You selected who you would speak to, and you told them what you saw fit? A. I selected whom I would speak to.

Q. And you told what you saw fit? A. Yes, Sir; and not what I did not see fit.

Q. Now, so far as you know, was it not from your utterances that there ever came the first leakage of the transactions thus purposed and carried out during that early season, that finally reached Mrs. Woodhull? A. No, Sir; it was from Mrs. Morse.

Q. Yes, but how did she find out what had passed, confidentially or privately between Mr. Moulton, Mr. Beecher and yourself? A. Because I told her and she told all the world.

Q. She is one of the persons— A. Yes, Sir.

Q. That you told? A. Yes, Sir.

Q. And you knew her infirmity before you told her? A. Yes Sir; I did. [Laughter.]

Judge Neilson—I shall be obliged to adjourn the Court. I will not sit here and attempt to administer justice with this disposition on the part of the audience. It is perfectly amazing. All the gentlemen in my view are respectable and intelligent, citizens, and yet without respect to the occasion or the Court, they continually interrupt the proceedings. I regret it very much; it disturbs the counsel; it is disrespectful to the Court; it does no good.

Mr. Evarts—Well, was any part of your shudder, when you read this card to Mrs. Woodhull, occasioned by your fear that your imprudence might have contributed to her knowledge? A. I don't understand how to divide a shudder into parts.

Mr. Evarts—As I recollect it was a spasm of agonized feeling on my part. What its component parts were I don't know.

Q. And a complete surprise, was it not? A. It certainly was a complete surprise.

Q. You didn't then have in your mind that you told Mrs. Morse and knew her infirmities of speech before you told her? A. I instantly imagined whence the stories came.

MR. TILTON'S COUNSEL IN THE BOWEN TROUBLE.

Q. Well, that is what I call making it a part of the shudder. Now, up to this stage of the matter no particular progress—this is through that Winter; I have now come to a date in May—up to that time no particular progress had been made in collecting your money from Mr. Bowen? A. I don't know that Mr. Moulton made any effort to do so. He was sick. Perhaps he did some.

Q. As a matter of fact, there was no particular progress made in that matter? A. The money was not collected. I don't know what progress was made in the matter.

Q. You didn't know of any progress? A. All I knew was that the money was not collected.

Q. Now, when was it that you took advice concerning that pecuniary interest between you and Mr. Bowen?

Mr. Beach—When first?

Mr. Evarts—He has spoken of it in his direct examination.

Mr. Beach [to the witness]—He means legal advice.

Mr. Evarts—Yes, Sir. You have spoken in your direct examination of having taken advice. A. I consulted Frederick A. Ward; I don't remember the date; I think a year elapsed, though.

Q. Was Mr. Ward alone in business, or was his a partnership? A. No, Sir; Mr. Ward was the law partner of Judge Reynolds.

Q. Of the present Judge Reynolds, who was then at the bar? A. Yes, Sir.

Q. And you took advice with them in regard to the collection of that claim? A. No, Sir; I did not.

Q. Well, what did you do? That is what I asked you, when you took advice concerning the collection of your claim against Mr. Bowen? A. I didn't understand your question in that way. I understood your question to be when I took legal advice in reference to this business.

Q. My friend, Mr. Beach, asked me if I meant legal advice, but I didn't intend to give up the rest of my question. My question was when you first took legal advice concerning the collection of your claim against Mr. Bowen? A. I never took any advice as to that point.

Q. Never at all? A. No, Sir. The legal advice was as to the validity of the contracts.

Mr. Evarts—I did not ask you that.

The Witness—Whether the contract was good—

Mr. Evarts—Still—

The Witness—Perhaps in a secondary sense it might be regarded as advice concerning the collection of the claim.

Q. I should regard it so; still, I cannot tell how that is. You did, then, take legal advice as to the validity of your pecuniary claim against Mr. Bowen upon the contracts of these gentlemen that you have named. A. I took advice as to this point, namely, whether those contracts which I had drawn, I not being a lawyer, were good for the \$7,000. Judge Reynolds said they would stand till doomsday, that they were as good as any one could have made.

Q. That was, the damages for an immediate dissolution? A. Yes, Sir.

Q. Now, come to the \$7,000. It would be \$5,200, and where did the other \$1,800 come from?

The Witness—I beg your pardon; I didn't hear; I was coughing.

Mr. Evarts—I will ask you. There is a penalty—I have understood it was half the salary—which would be beyond \$5,000.

Mr. Morris—Yes, Sir, and a certain percentage.

Mr. Evarts—Well, I am asking you (the Witness). There was some penalty for breaking the contracts without notice, was there not? A. Yes, Sir.

Q. And was that named as half the annual salaries on the two papers, or was it named as \$5,000 in a round sum? A. It was not named in a round sum.

Q. Very well; it was half the salaries. Well, that would be \$5,200? A. I don't think it was half the salaries. Permit me to explain. I think the penalty for breaking the contract with *The Independent* was half the salary. The penalty for breaking the contract with *The Union* was half the salary, together with half the profits of that year.

Q. The percentage? A. That is my recollection of it; I won't be positive of it.

Q. That is half of your percentage of the profits? A. Yes, Sir.

Q. It was in that way that \$7,000 came to be the sum; it included this percentage? A. Yes, Sir.

Q. That is so, is it not? The sum of \$7,000 that is spoken of was made up of half the salaries and of half the supposed percentage? A. Together with some unpaid salary.

Q. That is what I want to get at, whether the whole \$7,000 was in the nature of penalty, or whether it included a debt for past due arrears or something of that kind? A. I think there were certain sums for money due on my salary that had not been paid; I don't remember all the items.

Q. And they were counted into the \$7,000? A. Yes, Sir; together with the interest.

Q. Now, did you take advice at the same time, or at any time before the collection of the matter, respecting the validity of Mr. Bowen's defenses against its payment? A. No, Sir; he had not any.

Q. Well, he didn't pay? A. No, Sir, he didn't pay immediately; he did afterwards.

Q. He hadn't any good defense perhaps, but he didn't pay? A. Well, he had not any at all.

Q. Why didn't he pay you then? A. I will tell you why he didn't pay me.

Q. Well? A. Mr. Bowen wanted to arbitrate. In the beginning of January, 1871, he wanted to make the payment of the money he thought I needed, and he wanted, through the payment of that money, to get me to sign a paper to the effect that he and I would keep the peace. He was afraid, in other words, of the storm which he had raised between himself and Mr. Beecher, and he wanted an arbitration in order that not only business affairs but other difficulties should be settled. I understand exactly the reason why he wanted an arbitration. Mr. Moulton forbade it.

Q. Did he give you that reason, or was this only your under-



standing? A. No, Sir, he didn't give it; I extracted it from his mind.

Q. That is your understanding of it? A. Yes, Sir.

Q. But he didn't give it. Now, did Mr. Bowen ever admit to you, after you began to collect or wished to collect those liquidated damages or what not—did he ever admit to you that he owed any part of it? A. I have already told you I never laid eyes on Mr. Bowen, at least for a personal interview, between December 28th, 1870, and the night when he paid me the \$7,000 in 1872.

Q. Then he never did admit to you that he owed you a dollar? A. I never exchanged a word with him on any subject.

Q. Well, it is an argumentative mode of putting it. A. He never admitted or denied; I never conversed with him.

Mr. Morris—You mean the 27th or the 28th. A. Yes, Sir; the 27th or the 28th.

#### MR. TILTON'S EARLY QUARRELS WITH MR. BOWEN.

Q. Now, Mr. Bowen did make you a payment of a certain amount at that time, or very early in January; didn't he? A. He didn't make it to me; he made it to Mr. Moulton.

Q. Well, under that authority that Mr. Moulton had? A. Oh! no; that was quite another affair; these were notes that I held.

Q. Well, he did pay you some money, anyhow? A. Yes, not having any reference to my business with *The Independent*, or with *The Union*. I held Mr. Bowen's notes for \$4,000, or thereabouts, a matter entirely distinct from my business.

Q. They were not then arrears of salary, or anything of that kind; the notes were not for arrears of salary or anything of that kind? A. Oh, no, Sir; no, Sir; nothing of that sort.

Q. Money loaned by you, were they? A. My impression is that I had sold to Mr. Bowen some shares in *The Brooklyn Union* stock, which I held at an early period, and also my impression is that he took some notes from Mr. Gibson.

Q. Well, we won't go into details. A. At all events I held Mr. Bowen's notes for between \$4,000 and \$5,000.

Q. And they were not for arrears of salary or past dues? A. No, Sir; they had nothing to do with *The Independent* or *The Brooklyn Union*.

Q. That is enough. Now, do you remember a short time before these matters between you and Mr. Bowen arose, the situation in which, from some difference between you as to the support by your paper of a political candidate here, there was a trouble between you and Mr. Bowen? A. Yes, that is *The Brooklyn Union*.

Q. I mean that. That was a secular paper. Now, didn't Mr. Bowen then intimate to you that he might terminate your connection with that paper for that difference of opinion? A. I will tell you what Mr. Bowen said. He came into the office one day during the local campaign, I think August or September, and there was a certain candidate for office—I need not mention him.

Q. For Congress, I suppose. A. Well—

Q. Well, it is of no consequence? A. I better not name him.

Q. It was very public at the time? A. A bolt in the Republican party had been made on his account. A certain section of

the party wanted to repudiate him. I didn't know very much about the matter, but I took the paper in the line of the bolters, because they seemed to be the most respectable part of the community. Mr. Bowen came down from Connecticut and wanted me to support him. I declined, and he pressed the matter. I said, "Mr. Bowen, I am the editor of this paper by a contract, and it is impossible." He said to me that there was one way by which he could become the master of his own paper, and I said "Yes, and there is only one. So long as I am the editor by contract, I shall not support that man." It was a little flurry between us, the first and only one that we had had in 15 years.

Q. Well, he told you that there was one way, and that was by changing the editor? A. Yes; I told him that that was the only way—he must break his contract and take the penalty.

Q. And you went on, and the candidate was defeated, wasn't he?

Mr. Beach—Oh! well! well! well! that is quite unimportant.

Mr. Fullerton—We will keep out of politics, I guess.

Mr. Evarts—You persisted in your course with the paper? A. I certainly did, Sir.

Mr. Beach—Bolts don't often succeed, except in Carpenter's case.

#### MR. TILTON'S INTRODUCTION TO MRS. WOODHULL.

Mr. Evarts—Now, when you went over to see Mrs. Woodhull on this sort of summons, in May, 1871, she was not—her person was not a stranger to you, was it? A. What visit do you allude to, Sir?

Q. When you went over after the sort of summons she sent you to come and see her in reference to her publication of May 23d, 1871? A. I had seen her once and been introduced to her.

Q. When was that, and under what circumstances? A. One day—I can't recall the date—shortly before that occurrence, a gentleman called at my office, and in the course of some conversation asked me if I had ever seen Mrs. Woodhull, the Broad-st. broker. I said no, I never had. He told me she was a very remarkable woman.

Q. I don't care about all this detail, you know, I only want the circumstances. A. I walked down town with him into her office and was introduced to her. I had an interview I suppose four or five minutes long. That was the first time I saw her. After that, very shortly after that, came this card, when she sent for me.

Q. About how soon was this; about what date was this previous interview? A. My impression is that it was a very short time previous to the publication of this card.

Q. Do you think during that month of May? A. I think so; yes, Sir.

Q. Well, there you saw her alone in her office? A. No, Sir; I saw her husband there and one or two other persons. I don't remember all the persons there. It was a sort of levee.

Q. Did this gentleman go with you? A. Oh! yes; he introduced me.

Q. Introduced you, and remained, did he? A. Yes, Sir.

Q. But it was an interview in her office, was it not? A. Yes, Sir.

Q. Only yourself and your friend, and— A. My impression is that others were there.

Q. And this lady and her husband? A. Yes, Sir. I think that others besides were there in the office; that is my impression. There was quite a number of people there, but I won't be certain about that.

Q. Now, Sir, when did you last see Mrs. Woodhull? A. The last time I saw her, Sir, was in the month of April, 1872, shortly before the Cincinnati Convention that nominated Mr. Greeley.

Q. And what interrupted or broke off your intercourse with her at that time? A. Did I not give that in my direct examination?

Mr. Beach—Never mind—never mind; he wants you to repeat it.

Mr. Evarts—I don't care about it being the same; I only want the fact.

The Witness—My attention had been called about that time to an article, the proof slip of which was shown to me, in which Mrs. Woodhull proposed to vilify and blacken the names of a dozen or fifteen well-known ladies connected with the Woman's Suffrage Movement. I went down to see her, and asked her whether or not that was her article, whether it had been prepared by her, whether she designed to publish it; and the substance of the reply that she made was that she did not design to publish it, that she had not written it, that she did not approve of it; but a few days afterwards I learned that though the slip had not been published, still proofs had been taken of it, and it had been sent hither and yon, I was told, to the various editors and other people, and I then went down and upbraided her for that, and had an interview with her such as I have related, and turned my back upon her, and never saw her since.

Q. Well, that is the article that you have spoken of—either you—you have spoken of it; I don't know whether you gave it the name of the *Tit-for-Tat* article? A. That is my impression as to the title; yes, Sir.

Q. That is the title? A. Yes, Sir.

Q. And among these ladies thus exposed to public comment were acquaintances of yours, were there not? A. Every one of them was an intimate acquaintance.

Q. Every one of these fifteen ladies? A. Yes, Sir; I knew every one, I think, personally. I knew all the ladies connected with the women's suffrage movement more or less intimately.

Q. And that was your personal feeling or resentment about the matter, that these ladies were among your friends, and persons for whom you had respect? A. Yes, Sir; I told Mrs. Woodhull that I felt outraged, that a woman whom I had defended against the attacks of others, should now herself turn around and attack other women. I washed my hands of it from that moment.

#### EXTENT OF THE TILTON-WOODHULL INTIMACY.

Q. How frequently had you seen Mrs. Woodhull during the period that your intercourse did continue? A. My acquaintanceship with Mrs. Woodhull began—

Q. Well, we have got the date? A. Wait a moment!

Q. And the end. Now, how frequently during that? A. Well, during the eleven months, from the beginning to the end, I had a long lecture season in the Winter, and I think a Summer vacation. That left perhaps five or six months, during which I saw her; perhaps six or seven months. Does that answer your question?

Q. No, not in the least. A. Well, what is it you want to know?

Judge Neilson—How often.

Mr. Evarts—How frequently did you see her?

The Witness—Oh, I beg your pardon. I saw her very frequently—sometimes at her house and sometimes at her office, generally at her office.

Q. Did you see her elsewhere than at either her house or her office, and elsewhere than on the occasions that have been spoken of at your house or at Mr. Moulton's? A. I saw her at Mr. Moulton's house, and saw her at my house.

Q. Well, that we will leave out; we have had that? A. I don't remember ever seeing her anywhere else.

Q. Have you seen her at your house at other times than any that you have mentioned? A. No, Sir; I think she was three times at my house.

Q. Well, those are mentioned; do you remember an occasion during that Summer of your acquaintance with her in which you went down with her to Coney Island? A. Yes, Sir.

Q. And bathed? A. No, Sir.

Q. You don't remember the bathing? A. No.

Q. Well, was she at your house before you went down with her to Coney Island that day? A. I think that she and her husband came and stayed all night at my house one Saturday night, and part of Sunday; during which Mr. Beecher made them a visit in the afternoon, Mrs. Tilton later in the afternoon. Whether they stayed at my house two nights or one I have forgotten; possibly two nights.

Q. Well, had that any connection with this visit to Coney Island? A. I think, Sir, that when we went to Coney Island it was a Saturday afternoon, and that on coming back it was the same Saturday evening that they stayed all night; I won't be positive about that.

Q. See if you can refresh your recollection; do you remember taking a carriage? A. The carriage took me.

Q. [After a pause.] At your house and her in it with nobody else, and going to Coney Island and there bathing together? A. No, Sir; I was never in the water with her, except in the hot water in which I have been put these last years. [Laughter.]

Q. And returning and going to Mr. Moulton's house with her, and then going in this carriage to her house in New-York late that night? A. No, Sir; I don't remember that, but quite likely it may have occurred, all except the bathing.

Q. The rest you think is very likely? A. There is nothing improbable in it.

Q. Do you remember on returning from Coney Island with her, stopping at your house, leaving her in the carriage, going in, getting some manuscripts, talking with her about them and showing them on your way to Moulton's, and that they related to this business with Mr. Beecher? A. No, Sir; no, Sir.



Q. You don't rememoer anything of that kind? A. No, Sir; no such incident ever occurred.

Q. Nothing of that kind? A. No, Sir.

Q. Now, when you went thus late at night after the Coney Island excursion to her house, did the carriage leave you there and was it dismissed? A. I don't remember, Sir; I don't remember the circumstances.

Q. No; but you say it may have happened, all but the bathing? A. Yes, Sir; it may have happened.

Mr. Morris—He didn't say it did happen.

Mr. Evarts—Well, it was natural.

The Witness—I showed her a great many courtesies; I don't remember precisely whether that was one.

Q. Whether that was one of them you don't remember? A. No, Sir. But I never showed her any manuscripts having reference to Mr. Beecher or this business; that I know, Sir.

Q. That you are quite certain of? A. That I know.

Q. No narrative? A. No, Sir.

Q. No cards, no proposed publications? A. No, Sir.

Q. Nothing? A. No, Sir; there were no proposed publications to be made until long after—

Q. Well, don't argue about it, the facts are all I am looking for. A. I am giving you the facts, not the argument.

Q. Very well; you say there were none; all I want is your memory. A. I say there were none that were proposed to be made until long after my acquaintance with her ceased.

Q. Now, Sir, do you know how Mrs. Woodhull got her reference in her article to the Catherine Gaunt letter, as it is called, that your wife wrote you? A. I don't know what reference you alluded to.

Q. If there is such a reference, do you know where she got it? A. No, Sir; except that I talked very freely among my personal friends about Mrs. Tilton and her letters.

Q. At all times did you? A. Not at all times; no, Sir; at fit times, certain times.

Q. Yes. You did not then respect your wife's solicitude that no eye but yours should see her letters? A. I obeyed no such injunction as that, Sir; I talked with the few people who knew the facts.

Q. Among those few people did you talk to Victoria Woodhull about the Catherine Gaunt letter? A. No, no, Sir; never; nor any other letter of Mrs. Tilton's.

Q. Then, so far as you know, if there is a reference in the Woodhull publication to the Catherine Gaunt letter of your wife, you don't know how she became possessed of the fact that there was such a letter? A. Why, except that she became possessed of it as she got possessed of the other particulars through circumstances floating to her ear through other persons; didn't get them from me.

Q. And thus floating they must have originally started from your references to the Catherine Gaunt letter? A. Anything that anybody knew of the Catherine Gaunt letter must have come originally from me, because that letter was written to me; yes, Sir.

Q. That is exactly what I want to know. A. But I didn't state it to Mrs. Woodhull.

MR. TILTON AS A DEFENDER OF THE COMMUNE.

Q. No, so you say. Now, Sir, do you remember an incident in which you and Mrs. Woodhull and her sister appeared in a public procession on Sunday in honor of the Commune in the streets of New-York? A. I remember a procession, Sir, in honor of the Commune, in which I appeared, and in which I afterwards understood that they appeared, but we did not appear together, and thousands of persons appeared in that same procession. I walked arm in arm with my friend John Swinton on that occasion.

Q. All the way? A. Oh! I don't know. [Turning to Mr. Swinton.] Was it all the way?

Q. Now, did you carry a banner in that procession? A. I did not.

Q. No part of the way? A. No part of the way.

Q. Neither in a carriage nor on foot? A. Neither in a carriage nor on foot. That was a procession in honor of the revered memory of Rossel, whom the French Government put to death, and whose name ought to live, being the synonym of liberty.

Q. Exactly; he was one of the Communists, wasn't he? A. Yes, Sir, and a sublime man.

Q. And he was put to death? A. By judicial murder.

Q. By judgment for having executed the Chief Justice of France and the Archbishop of Paris? A. No, round the world, no; it is an insult to his memory to suggest it.

Q. They were executed, were they not, by the Commune? A. Yes, Sir—no, not by the Commune.

Mr. Evarts—The Chief Justice of France and the Archbishop of Paris were—

The Witness—[Interrupting.] I say here under oath that the memory of young Rossel is sweet and clean, and I honor him before all mankind.

Mr. Evarts—Now, that is an episode.

Mr. Beach—Well, I think you are getting up an episode if you are going into the history of the Commune.

Mr. Evarts—I understand it, but I didn't introduce the episode.

Mr. Beach—Well, this is your cross-examination, you introduced the Commune.

Mr. Evarts—I did the public procession with these ladies; that I introduced.

Mr. Beach—We don't want an examination into the history of that trial upon this.

Mr. Evarts—Well, he had gone into a eulogy of Rossel.

Mr. Fullerton—As he properly might. He had nothing to do with that procession, at all.

Mr. Evarts—Only I want to see the grounds of the eulogy.

Mr. Fullerton—You have seen them.

Mr. Evarts—Yes, Sir.

Mr. Fullerton—Well, if you was satisfied with them—

Mr. Evarts—I am entirely satisfied with them. [To the witness.] Now, you say that until after that procession on that Sunday, you didn't know that Mrs. Woodhull and Miss Clafin, an unmarried lady I believe, were in it? A. Never knew anything about it, Sir, until it was all over.

Q. And did you see it in the papers for the first? A. I don't

remember how the information came to me; however, my impression is that I called at the house that evening and there ascertained it; that is my recollection, but I won't be certain about it.

Q. Went to Mrs. Woodhull's? A. Yes, Sir; I think I did; but I won't be sure of that.

Q. That was on the 21st of December, wasn't it? A. I don't know.

Q. Or 17th of December? A. Don't know.

Q. Well, you remember it was cold weather? A. Don't remember anything about that; I remember it was a Sunday. The police of New-York were going to deny us the right of making an exhibition.

Q. And you made it? A. Yes, Sir; we did, believing this to be a free country.

Q. Well, you don't seem to have been interrupted by anybody. Then you think no such scene as your carrying a banner and their holding the tassels could have occurred during that procession by any possibility. A. Why, Sir, it could have occurred very easily, but it didn't.

Q. Well, I mean could not have occurred as matter of fact? A. Yes, that is the only way it could have occurred.

Q. On that occasion without your knowing it now? A. Do you mean to ask me whether I could have carried a banner on that occasion without my knowing it?

Q. Without knowing it now? A. Well, Sir, I didn't carry a banner on that occasion; I walked arm in arm with my personal friend.

Q. And nobody else during the whole procession? A. Yes, Sir; but allow me to observe, Mr. Evarts, that if I had carried a banner it would only have been to my honor, and not discredit; I had no objection to carrying a banner to the memory of such a man. He went to the scaffold, Sir, with a Bible in his hand, kissing it, and his soul went up to God. No man need be ashamed of carrying a banner for him.

Q. Very well; you are entitled to that view. Now, how frequently did you, during this period of your acquaintance with Mrs. Woodhull, go with her to Coney Island? A. I recollect going with her once; perhaps I went twice.

Q. Didn't you go more? A. No, Sir; I think not.

Q. Are you certain you didn't go more? A. No; I ain't certain about anything.

Q. And did you go boating, if you didn't go bathing? A. I went once rowing on the Harlem River with Mrs. Woodhull and her husband.

Q. Was that on Sunday? A. I don't remember; quite likely.

Q. Were these visits at Coney Island on Sunday, any of them? A. My impression is that they were on Saturday; I won't be certain, though.

Q. It might have been Sunday? A. I have been there Sunday; yes, Sir.

Q. Well, with her. I have nothing to do with your other amusement. A. It may just as well have been on Sunday as any other day.

Q. On any other day, so far as you were concerned? A. Yes, Sir.

Q. Or she? A. I think quite likely.

Judge Neilson—I wish to say that a communication has been handed up from a very respectable person stating that yesterday the persons standing behind the jury—not the same persons there now—were heard to make remarks in respect to this case in the hearing of the jury, and that is the subject of the complaint. I want it understood that that is a grave offense, and one which the Court would punish severely and summarily, without respect to the person who might be guilty of it, and I hope no such thing will occur again, and if it does, I charge the officers to notify me of it on the instant. The gentlemen present have seen my solicitude to enable the jury to go out without being subject to the casual observations that people might think proper to make, and I think it is hard that citizens should so far forget the respect due to the jury as to indulge in observations in their presence.

Mr. Evarts—If your Honor please, I have observed (without thinking any evil of it, though of course), that sometimes the spectators or audience would lean over that rail, immediately behind the jury, and, of course, would bring themselves quite in proximity, and although of course, there is a desire that there should be as much space for visitors as possible, yet it really seems to me as if that space behind the jury might be kept clear.

Judge Neilson—Well, Sir, it shall be so hereafter.

The usual recess was here taken.

#### THE CATHERINE GAUNT LETTER AS WRITTEN AND AS PUBLISHED.

The Court met at 2 o'clock, pursuant to adjournment. Theodore Tilton was recalled, and the cross-examination resumed.

Mr. Carpenter (foreman of the jury)—May it please the Court, I am requested by the jury to say that there never has been an improper word expressed in their hearing by any person in the rear.

Judge Neilson—I am very happy to hear it.

Mr. Carpenter—And they consider that communication sent to the Court as an unjust reflection upon them.

Judge Neilson—It may have arisen from some misapprehension. I am very happy to hear it, Sir.

Mr. Evarts—Please look at that letter, and say if that is the Catherine Gaunt letter, so-called?

Mr. Fullerton—What page is that, Mr. Evarts?

Mr. Evarts—I don't know; there is no paging by which we can find it.

The Witness—This seems to be a reproduction, Sir; I don't know whether it is correctly printed or not.

Q. Well, of course—the question of printing. We have the original letter here. Now, that is produced by—not, in your sworn statement, as it is called? A. Sir.

Q. Look at that letter, as there printed, and see if it imports to be a whole letter; whether any omissions are. A. I could not say whether any omissions are made here.



whole letter was lithographed in *The Graphic*, I believe—my impression is.

Q. Well, I only ask you whether there are noted any omissions in this? A. Well, Sir, I could not answer as to that, except—

Q. I did not ask you whether any omissions are made, but whether any are noted, whether there is any indication of omission. A. Here?

Mr. Beach—What? In the print?

Mr. Evarts—In that print; yes.

Mr. Beach—I don't think that is proper, Sir.

The Witness—I don't understand your question, Mr. Evarts.

Mr. Beach—If the object of that examination is to show that any part of the letter was suppressed intentionally, unless it is shown that Mr. Tilton had something to do with the printing, it cannot be important; I object, therefore, to that question.

Mr. Evarts—You object because the printing does not affect him?

Mr. Beach—Yes, Sir.

The Witness—I remember that the Catherine Gaunt letter has never been printed correctly that I know of, except in the lithographic transcript in *The Graphic* newspaper. I think it was printed there; it had many errors.

Q. Is the lithograph in this book? A. I think very few of those transcripts are put in that book.

Mr. Beach—No, I don't think it is. Yes, that must be.

Mr. Evarts—No, it don't seem to be here. [To the witness.] You speak with some assurance, Mr. Tilton, but was this Catherine Gaunt letter ever lithographed at all. A. Well, Sir, it was given to *The Graphic* office to be lithographed. I cannot say for certain whether everything was lithographed that was sent over there. I know I sent it there myself.

Q. To be lithographed? A. Yes, Sir; I think a number of the letters that were sent there were not lithographed. Whether that was included, now, or not I don't know.

Q. Look at those leaves? [Handing witness some half sheets of legal cap]. A. This is Mr. Maverick's handwriting.

Q. You recognize them as Mr. Maverick's handwriting? A. Yes, Sir.

Q. And as the Catherine Gaunt letter? A. No; not as the Catherine Gaunt letter, but it appears to be a copy of it, or of a part of it. I don't know whether it is all here or not.

Q. Well, that is the letter—that is a reproduction of the letter that we are talking about? A. It is a reproduction either of the letter or a part of the letter, I don't know which. You can easily compare it with the original, if you have the original.

Q. Yes; I understand that. Now, those leaves—do they purport to be a whole letter? A. I don't think they do.

Q. Is there any mark on those of asterisks or omissions of any kind? A. I don't see any.

Q. Anything to indicate that that was not the whole letter?

A. I see any; nor is there anything to indicate that this is not all. My recollection is, Mr. Evarts, that that letter was some blunder in the printing of it, that some

was left out, and I recollect of sending it over to *The*

It was lithographed there, I think. My impression

is that you will find it lithographed in one of the impressions from *The Graphic* office, but I won't be certain.

Q. Well, if there is a passage left out there that is not from a blunder in printing, is it [referring to the manuscript?] A. No, Sir; I don't know whether it is left out there or not.

Q. No; it does not appear.

Mr. Fullerton—Let it appear.

The Witness—I remember that after that sworn statement was published I made some little comparison between that and the original manuscripts, and found some little errors, some little omissions.

Q. Yes. Do you remember that there was one in the Catherine Gaunt letter? A. It strikes me that there was, of some sort, Sir. I don't exactly know.

Q. Unimportant?

Mr. Fullerton—One moment! We object to that.

The Witness—I don't know what you consider unimportant.

Mr. Evarts—Why is it objectionable—whether it is unimportant?

Mr. Fullerton—Let us see what it was, and then we will see whether it was important or not.

Mr. Beach—The omission will show for itself whether it is important or not.

Mr. Evarts—Yes, but a man's notice of an omission may show whether he thought it was important.

Mr. Fullerton—That is not the question before the Court.

Mr. Evarts—That is my question.

Mr. Fullerton—Not now it is not.

Mr. Evarts—[To the witness.] Did you see an omission that struck you as important, or was it only unimportant? A. I remember that when that sworn statement was printed, as it was printed without my authority, and without my revision, I feared that there were many typographical errors in it. It was printed with an omission in one part, asterisks being thrown in. I remember some time afterward looking to see how far the documents had been incorrectly or correctly printed. I remember there was an error in Mr. Beecher's letter of the 1st of January. It said their "breasts" would ache instead of their "hearts," and there was an error I remember of the word "never" instead of "not," somewhere else, and my impression is that there was some omission in the Catherine Gaunt letter, and one or two other letters, and I sent that over to *The Graphic* office, I think, to have it reproduced.

Q. Lithographed? A. Yes; my impression is that you will find it printed there.

Q. Now, I will repeat my question. When you saw an omission, if you did see it, in the print of the Catherine Gaunt letter, as compared with the original, did the omission strike you as important, or only as unimportant?

Mr. Beach—The witness does not state positively that he saw any omission in the Catherine Gaunt letter.

The Witness—I don't remember particularly, Sir.

Mr. Beach—It is assuming it, Sir.

Mr. Evarts—[To the witness]: What do you say to that?

Mr. Beach—Wait one moment. He won't say anything about it.

Mr. Evarts—What is the objection?

Mr. Beach—I object to it as assuming that there was an omission in the printing of the Catherine Gaunt letter.

Judge Neilson—The question rather is if he did observe an omission, did it strike him as important or not.

The Witness—I think there was a sentence or so left out.

Judge Neilson—The question is whether it struck you as important.

Mr. Evarts—Or unimportant.

The Witness—Important to what end?

Mr. Evarts—To any end—to the truthfulness of the publication of the letter. A. No, Sir; it did not.

Q. It did not? No, Sir.

Q. Well, we will see. A. My recollection is that there was something in it about a renewal of a marriage vow—something of that kind.

Q. You look at the print while I read you the original. [Reading]: “My dear Theodore.” This is dated “Schoharie, June 23, 1871. My dear Theodore.”

Mr. Morris—One moment, Mr. Evarts.

Mr. Evarts—Oh, I beg your pardon.

[Mr. Morris searches for the letter in the printed book.]

The Witness—I ought to mention, Mr. Evarts, that I never compared that with the printing in this book, but with the printing in *The Argus* newspaper.

Mr. Evarts—Well. [Reading]:

MY DEAR THEODORE: To-day, through the ministry of Catherine Gaunt, a character of fiction, my eyes have been opened for the first time in my experience, so that I see clearly my sin! It was when I knew that I was loved, to suffer it to grow to a passion. A virtuous woman should check instantly an absorbing love. But it appeared to me in such false light. That the love I felt and received could harm no one, not even you, I have believed unfalteringly until four o'clock this afternoon, when the heavenly vision dawned upon me. I see now, as never before, the wrong I have done you, and hasten immediately to ask your pardon, with a penitence so sincere that henceforth (if reason remains) you may trust me implicitly. Oh! my dear Theo., though your opinions are not restful or congenial to my soul, yet my own integrity and purity are a sacred and holy thing to me. Bless God, with me, for Catherine Gaunt, and for all the sure leadings of an all-wise and loving Providence. Yes; now I feel quite prepared to renew my marriage vow with you, to keep it as the Saviour requireth, who looketh at the eye and the heart. Never before could I say this.

Mr. Porter—From what you now read is omitted.

Mr. Evarts—From what I now read is omitted.

#### DISCUSSION UPON THE GAUNT LETTER.

Mr. Beach—I object to it. I object, that remarks of that kind should be made in the presence of the Jury and the counsel.

Mr. Evarts—I am comparing the published letter with this letter.

Judge Neilson—The form of publication is utterly immaterial unless the witness had the control and supervision of the publication.

Mr. Evarts—No doubt; no doubt.

Judge Neilson—Therefore a variance would not be of any moment.

Mr. Evarts—I have shown him the text of this letter in the handwriting of his friend, Mr. Maverick, who copied the statement that he presented to the Committee.

Judge Neilson—That don't advance you a single step, because he may not have copied correctly.

Mr. Evarts—He may not, but there are no suspicions of that kind.

Judge Neilson—If he did not copy correctly, is the witness responsible for that?

Mr. Evarts—It is the original presented to the Committee.

Mr. Porter—And sworn to by Mr. Tilton.

Mr. Fullerton—That has not yet appeared. That is the answer to that.

Mr. Porter—I said it was in his sworn statement.

Judge Neilson—It does not appear in what form it is in that statement, if it be there at all.

Mr. Fullerton—No, Sir.

Mr. Evarts—I have produced it to him and asked him if it purported to be there a whole letter.

Mr. Beach—He has presented to Mr. Tilton a professed reprint of his statement.

Mr. Evarts—I presented to him his copyist's copy—Mr. Maverick's copy.

Judge Neilson—Was he his copyist?

Mr. Evarts—Yes; he stated that fact.

Judge Neilson—It don't appear.

Mr. Tracy—This is the original. It is a copy which Mr. Maverick, and which he testified before, when we had another letter up, was the copying of Mr. Maverick, his clerk, and that that copying went before the Committee.

Judge Neilson—I did not recall the fact, Mr. Evarts, that the paper you showed the witness before, and which was in Mr. Maverick's handwriting, included the Gaunt letter.

Mr. Beach—Well, Sir, it does not appear.

Judge Neilson—It was another part of it.

Mr. Evarts—Your Honor is quite right about it. I did not then show him the Gaunt letter in that connection, but I now show him the Gaunt letter in this same handwriting of Mr. Maverick, which he recognizes.

The Witness—Mr. Evarts, let me say—

Mr. Fullerton—Just one moment, now.

Mr. Beach—It may be necessary.

Mr. Evarts—Well, Mr. Tilton, what have you to say?

The Witness—I would like to say this: that if there is any error in the copying it should not be accredited to Mr. Maverick, because he is a very methodical and accurate man. If there is any blunder it is probably mine.

Judge Neilson—Are you conscious of any change or alteration? A. No, Sir; not at all.

Q. Did you direct any? A. I did not, Sir.

Mr. Evarts—Ah! well, if your Honor please—

Judge Neilson—Well, you have the witness.

Mr. Evarts—The witness is mine.

Mr. Beach—Oh, no; not yours beyond the control of the Court.



The Witness—I simply do not wish another man chargeable with any error of mine; that is all.

Mr. Evarts—No, no; we will take care of that. Now, I propose to read the omission.

Judge Neilson—I think you may proceed.

Mr. Fullerton—If your Honor please, let us understand ourselves exactly. What is this paper that they show to the witness which they call the Catherine Gaunt letter? It is stated to be a part of the statement of Mr. Tilton which was sworn to and which went before the Committee; but that is a bare statement of counsel; it is not proved in the case yet, so as to be a part of the case and of which action can be predicated. Now, until that is put in evidence so that that fact will appear, why, as a matter of course we cannot take it for granted, simply because it is asserted to be so, that the Catherine Gaunt letter is a part of that statement, and that that is here now in Court. Mr. Maverick did make a copy of Mr. Tilton's statement; but is this a part of the copy of which Mr. Tilton speaks? Mr. Maverick may have made more than one. He may for some purpose of his own have made another copy. We know nothing upon that subject at all. Now, surely your Honor would not permit them to point out discrepancies between this paper which they have in hand and the witness's statement, without laying the foundation for such proof, because it is undoubtedly the object of the other side to hold Mr. Tilton responsible for some kind of change in that document.

Mr. Evarts—We certainly do.

Judge Neilson—It has also been stated that it was a sworn statement. Have we any such statement before us?

Mr. Fullerton—Not at all, and that is what I am speaking about now. There is no such statement before the Court at all.

Judge Neilson—Then it is improper to speak of it as a sworn statement.

Mr. Fullerton—It is now proper to speak of it as a sworn statement, and it is improper to speak of it as his statement that Mr. Maverick copied, until we are informed of that fact in the proper way.

Mr. Beach—They do not show the statement here that Mr. Maverick copied.

Mr. Fullerton—No, they produce some loose leaves, a part of what they call a statement, and ask in whose handwriting it is. That is as far as they have gone. The statement is either to be in evidence, or out of evidence, one or the other.

Mr. Evarts—Now, if your Honor please, the point of imputation is this, and it is a very serious one. The point of imputation is that Mr. Tilton has presented before the Committee of the church—

The Witness—That identical letter you hold in you hand, the original manuscript. I carried it there.

Judge Neilson—One moment; don't interrupt the counsel.

Mr. Evarts—And has published, in the same manner, a letter of his wife, presented as a vital point affecting her, that is not a letter of his wife, but the omission of the part omitted changes its sense and effect. Now, that is the imputation.

Judge Neilson—Now, the question is, whether, in order to support that suggestion, it is not necessary for you to produce the statement, which, it is said, has been sworn to, so it may be compared with the letter.

Mr. Evarts—Now, all that I propose to produce—and that I will do in fairness to the witness, that he may give any explanation that he can in advance of the reading of the true letter, and of a scrutiny of the difference, of how there happened to be that omission. I hand him a printed book containing that letter, and ask his attention to that letter, and nothing else, as thus printed, and he says he cannot be responsible for the print. I then hand him the letter, and nothing else, as in the handwriting of his amanuensis, and as laid before the Committee. That is the letter. I do not want anything to do with his statement.

Mr. Fullerton—It does not appear that that letter was before the Committee.

Mr. Evarts—And I then ask him whether that letter purports to be a whole letter, as thus written, and contains any indication of omission, to get rid of any difficulty about printing; and I understand the witness that it does not. Then he has given us statements that he observed, or may have observed, some time or other, that there was a difference between the Catherine Gaunt letter as printed, as used, and the Catherine Gaunt letter as written by his wife, and that he sent it over to *The Graphic*, he thinks, to be lithographed, or, as he first stated, it was lithographed in *The Graphic*, as I supposed he remembered; but now he does not remember that it was lithographed, but that he sent it, and supposes, no doubt, that it was. Well, whether it was lithographed will appear from *The Graphic* itself whenever we look back. Now, I am reading, as is my right, the true letter by his wife, and I have a right, as it seems to me, to show every publication of that hitherto under the supervision of that witness in any degree, has omitted this passage, and sacrificed, in so far, the truthfulness of this letter; and then the magnitude of the sacrifice will appear by comparing the letter as printed, and used, with the letter as written by the wife.

Judge Neilson—You have a right to read the letter, but the production of the statement itself is as necessary to support your suggestion of discrepancy as the production of the letter itself would be.

Mr. Evarts—How does your Honor mean as to the production of the statement otherwise than of the manuscript letter as contained in the statement?

Judge Neilson—Here is a detached leaf written by the same party, it is said. It does not appear that it was a part of the statement. It may have been incorrectly written. I don't see how you can institute a comparison between the letter and the statement without both being here. The presence of one is as necessary as the presence of the other.

Mr. Evarts—I understand your Honor perhaps to lay down some proposition that may be necessarily observed, but whether it has not been abused is the question. It is not certainly necessary that I wish to compare a letter contained in a publication for which this witness is responsible, with a letter as

written, to show the difference, that I should use the statement in the rest of it, because I have nothing to do with that.

Judge Neilson—You have a right to show that he published it untruly; no doubt about that.

Mr. Evarts—Now, your Honor thinks that on the present proof concerning the statement already in, that does not appear.

Judge Neilson—So it strikes me, Sir.

Mr. Evarts—Well, that we already have in.

The Witness—Mr. Evarts, may I borrow the manuscript a moment?

Mr. Evarts—Certainly. [Handing witness Mr. Maverick's copy.]

The Witness—I mean the latter.

Mr. Evarts—The letter itself.

The Witness—Yes, Sir.

Mr. Evarts—Yes. [Handing the witness the letter.]

The Witness—My impression is that those little marks on top show that it has been lithographed in *The Graphic* office, I feel morally certain of it; at the same time, I will not swear to it.

Mr. Evarts—Well, I don't know, of course. *The Graphic* will speak for itself whether it is lithographed.

The Witness—Yes, Sir.

Mr. Evarts—Now, look at that letter and say whether you believe that manuscript which I place in your hands to be the manuscript of the letter as it was presented before the Committee?

Mr. Fullerton—That we object to.

The Witness—I presented—

Mr. Fullerton—Just one moment; we object to it; he asks for the mere matter of belief of this witness as to a matter that can be certainly proved more satisfactorily by the statement itself.

Judge Neilson—He should ask if he knows.

Mr. Evarts—Well, do you know or believe? I have a right to either.

Mr. Fullerton—You have a right to put it either way.

Mr. Evarts—Yes; and I have a right to an answer.

Mr. Fullerton—And I have a right to object before you get it.

Mr. Evarts—Do you know or believe that that manuscript of this letter, which you now hold in your hands, was in those very leaves as they are now in your hands, a part of the statement as you personally laid it before the Church Committee?

Mr. Fullerton—That I object to.

Judge Neilson—I think I will take the answer.

Mr. Fullerton—Whether he knows or believes?

Judge Neilson—Whether he knows.

Mr. Fullerton—Well, that is not the question, Sir; that is not the question, whether he knows it; the question is, whether he knows or believes it.

Mr. Evarts—I think we are entitled on cross-examination to the witness's belief about the fact.

Mr. Fullerton—If they want to compare the Catherine Gaunt letter with anything that was placed before the Committee, why, as a matter of course, they have a right to do so. But

they must show, in the first place, what was placed before the Committee.

Mr. Evarts—Yes, and I am going to show.

Mr. Fullerton—This is a mere matter of belief on the part of the witness.

Mr. Evarts—Oh! well, well, well!—On a cross-examination—

Mr. Beach—Your Honor will recollect the rule of law, I think, that where a witness is cross-examined in regard to the contents of a paper, the paper itself must be introduced and submitted to his inspection. It is so decided in the Court of Appeals.

Judge Neilson—Oh, yes; I do not mean any decision by that.

Mr. Beach—Well, then, they present to him something in the handwriting of Mr. Maverick and do not ask him whether that was a part of the statement, but whether he believes it was a part of the statement, or a copy of a portion of the statement which was submitted to the Committee.

Mr. Evarts—No; not a copy—the identical leaves that were presented.

Mr. Beach—Very well; whether he knows or believes that that was a part of the identical statement submitted to the Committee.

Judge Neilson—The belief is objectionable, if it savors of speculation. The inquiry is as to the knowledge of the witness.

Mr. Beach—Well, I suppose it is sufficient to present that part of the paper to which the question refers, and if the witness can identify that as a portion of his statement, why I certainly have no objection to that.

Mr. Evarts—Yes, Sir; very well. Now, Mr. Tilton—

The Witness—What is the question?

Mr. Evarts—Read the question to him, please.

[Question read by THE TRIBUNE stenographer.]

Mr. Evarts—I asked you to read the last one; there were some variations in the general phraseology of it.

The stenographer stated that the question read was the last one.

Mr. Evarts—Now, I will make a new question, and take your Honor's ruling. Now, if you will write down, Mr. Stenographer, my question. [To the Witness]: Do you know or believe that the written leaves which you hold in your hands, are the copy of the Catherine Gaunt letter, that you personally laid before the Committee on the Church examination? Now, wait if they object to that question.

Judge Neilson—I think he may answer that. Look at the paper?

A. I have every reason to believe, Sir, that this is Mr. Maverick's copy, or a few leaves of Mr. Maverick's copy of the sworn statement which I laid before that Committee, which statement included a copy of the Catherine Gaunt letter, and which statement, in being laid before the Committee, was accompanied also with the original manuscript of the Catherine Gaunt letter which I carried to the Committee, which manuscript you now hold in your hand.

Judge Neilson—But the question also was whether you recognized these papers as parts of your statement, those leaves?

The Witness—Your Honor, those leaves—



Mr. Evarts—What was your Honor's remark?

Judge Neilson—I suggested to him that I thought your question also involved this, whether those leaves were part of his statement.

Mr. Evarts—No; I did not include that—whether those were the very leaves that he laid before the Committee. I do not care what they were in.

Judge Neilson—Do you say they are the very leaves?

Mr. Fullerton—No; he says he has reason to believe.

The Witness—I say I have every reason to believe, Sir, that those few leaves are part of Mr. Maverick's copy.

Judge Neilson—They do not ask you that; no matter about his writing.

Mr. Evarts—Of course that is unnecessary.

Judge Neilson—The question is, whether those leaves formed part of the statement—those very leaves.

Mr. Evarts—If your Honor please, we will have, if it is proper—

Judge Neilson—Well, you interrogate him.

Mr. Evarts—It is not in that view I was speaking. I was going to say if your Honor will think it proper, we will have the answer as the stenographer has taken it down.

[Answer read by THE TRIBUNE stenographer.]

Mr. Evarts—Very well; all very well so far—now I will ask another question. Those very leaves that you hold in your hand, were they or not the very leaves, so far as they went, of the statement that was put before the Committee? A. Well, Sir, I have every reason to believe they are.

Q. Yes, that I understand. A. Yes, Sir.

Mr. Beach—What? That those were placed before the Committee?

Mr. Evarts—Those very leaves were before the Committee.

The Witness—I have every reason to believe that those pages 92, 93, 94, 95 and 96, were part of Mr. Maverick's copy of the sworn statement which I laid in person before the Committee.

Judge Neilson—No; the inquiry is whether it was a part of the sworn statement itself.

Mr. Evarts.—Well, it precedes—if your Honor please: "A copy of which I in person laid before the Committee"—he has just said that.

Judge Neilson—But suppose he does say that is a copy of the paper which he laid before the Committee?

Mr. Evarts—He does not say that. I beg your Honor's pardon. He says: "this is Mr. Maverick's copy, which copy I, in person, handed to the Committee."

Judge Neilson—Is that so, Sir?

The Witness—Yes, Sir, I say I have every reason to believe it is so.

Judge Neilson—I understood you to say that you had every reason to believe that this was a copy of your statement, of so much of your statement.

Mr. Evarts—No, it was the copy made for the purpose and which he handed to the Committee.

Judge Neilson—And which was copied in the statement, those very leaves?

The Witness—If your Honor please, I wrote a statement; my handwriting was bad and I had it copied, and I laid the clean

copy, which Mr. Maverick had the kindness to make, before the Committee. I laid the copy before the Committee; the original I kept myself. This is part of the copy which I laid before the Committee. That is it.

#### THE OMISSIONS FROM THE GAUNT LETTERS.

Mr. Evarts—Now, you have said that at the same time, you laid before the Committee as I understand you, this letter! A. Yes, Sir. I carried to the Committee at their request, a great package of Mrs. Tilton's letters; all the letters, and proposed to read them, but I was interrupted on the ground that it would take too much time—this letter being among them—but a special Committee was appointed, consisting of Mr. Winslow, to call on me and see these letters.

Q. Well, now, was not this about the way the matter went, that you carried a quantity of letters and other manuscripts for—what I mean— A. What is that?

Q. You carried a quantity of manuscripts there, including this letter? A. I carried Mrs. Tilton's letters; yes, Sir.

Q. And your own? A. I don't think I carried mine.

Q. You carried a quantity—you did not carry the whole, did you? A. I did carry every letter I had of hers.

Q. The whole? A. Yes, Sir; a package as large as *that*.

Q. And none of them were read? A. Yes, Sir; two or three of them were read; I began to read them.

Q. By you? A. Yes, Sir; by me; and somebody made a motion or a suggestion that it would take too much time, and then Mr. Winslow, if I remember right, was appointed by the Committee to wait upon me and make an examination of these letters at his leisure. That is my recollection of the circumstances.

Q. And this letter itself was not read before the Committee that night. A. No, Sir; it was not the night; it was the day. I began chronologically to read them and was interrupted.

Q. Didn't get to this? A. No, Sir; but it was there before the Committee. It was in the Committee room.

Q. It was in the Committee room and in your possession? A. Yes, Sir.

Mr. Evarts—As you now state. Now, we will point out the omissions if your Honor please. I will begin at this paragraph. [Reading]: "Yes, now I feel quite prepared to renew my marriage vow with you and to keep it as the Saviour requireth it, who looketh at the eye and the heart. Never before could I say this. I know not"—tell me when I resume what is printed—"Never before could I say this." Now I begin. "I know not"—is that in?

Mr. Porter—That sentence is not in the printed book.

Mr. Evarts—Now, tell me when I read anything that is in there. [Reading]: "I know not that you are yet able, or ever will be, to say this to me. Still, with what profound thankfulness that I am come to this sure foundation, and that my feet are planted on the rock of this great truth you cannot at all realize."

Mr. Porter—All that portion is omitted in the copy I showed to me.

Mr. Evarts—I will begin again. [Reading]: “When you yearn toward me with any true feeling”——

Mr. Porter—The word “any” is omitted.

Mr. Evarts [reading]—“with any true feeling, be assured of the tried, purified and restored love of Elizabeth. Schoharie, June 29th, 1871.”

[Letter handed to stenographer to mark]

Mr. Beach—Well, you are going to put that Maverick copy in, ain't you? You want it?

Mr. Evarts—Yes, Sir; I will mark it for identification, if you choose.

Mr. Beach—Well, it will be marked as evidence, I suppose.

Judge Neilson—Certainly; it has been read.

Mr. Evarts—I mark it, Sir, as an identification of the paper that I showed to the witness, and only such.

Mr. Beach—If your Honor please, that paper, the Maverick copy, has been held by one of the counsel, and statements made to the jury that certain passages were omitted from it. Those statements are not evidence; to prove the omission, I insist that the Maverick copy should be in evidence.

Judge Neilson—It is not before us with any such view to correction unless it is evidence.

Mr. Beach—The statements of counsel are not evidence.

Mr. Evarts—I put a certain paper in the witness's hands, and he states that that is a paper that, as a copy of the Catherine Gaunt letter, was placed by him before the Committee, and I then read the Catherine Gaunt letter as it was written, and the comparison follows in the province of the jury and of the Judge, by looking at those two papers.

Judge Neilson—Well, to the end of that comparison, one paper must be before the Court as well as the other.

Mr. Evarts—And to the end of that comparison, I now mark the paper that I showed the witness.

Mr. Morris—In evidence?

Mr. Evarts—Mark it as in evidence, as shown to the witness; that is all.

Mr. Beach—Well, I ask from the counsel an avowal, whether that paper, the Maverick copy, is presented in evidence?

Mr. Evarts—And I state to the gentleman that I have it marked to identify it, just as I offered it in evidence, to wit: a paper shown to the witness.

Mr. Beach—Oh, well, if it is in evidence, that is all I want.

Judge Neilson—It is before the Court, or we know nothing about it.

Mr. Morris—Unless it is in evidence, we say that that is precisely as the original letter is, verbatim.

Judge Neilson—The comparison goes for nothing.

Mr. Beach—I move now to strike out from the stenographer's minutes, all allegations of counsel, that there was any omission in that Maverick copy of any part of the Catherine Gaunt letter, as read by the counsel.

Judge Neilson—That is granted, unless they put the Maverick paper in evidence.

Mr. Evarts—The statements of counsel are quite unimportant for comparison of papers; we will reproduce them at the proper time.

Judge Neilson—I suppose they are regarded as before us.

Mr. Evarts—This is the paper I showed to the witness, and what I showed it to him for appears in his oral examination. I now have it marked as shown to the witness.

Judge Neilson—That is a matter of form undoubtedly, but the jury have before them certain statements in regard to the discrepancy, and those statements in regard to the discrepancy are not proper here unless the papers are before us.

Mr. Evarts—There is no doubt that they are to depend upon the comparison of the papers, and all that has been done as we went on with the case is, we have compared written letters with printed ones, and pointed out the differences as we read them.

Judge Neilson—They are both considered as read then.

Mr. Beach—And both in evidence.

Judge Neilson—Yes, Sir, unless in evidence you have no comparison; we have been wasting our time.

Mr. Evarts—No doubt, no doubt. Unless the paper that he says he put before the Committee in these leaves is in evidence, there is no comparison.

[Letter marked “D, 99;” Maverick copy marked “D, 100,” on each sheet.]

#### THE WOODHULL BIOGRAPHY DISCUSSED.

Mr. Evarts—We were proceeding with your intercourse with Mrs. Woodhull when this Catherine Gaunt letter came out in connection with it. Now, do you remember any public services that you performed for Mrs. Woodhull, except the presiding at her meeting, and the writing of her biography, and the writing of a letter to Mr. Sumner, I think, on the XIVth Amendment, wasn't it—Woman's Suffrage? A. I wrote also a letter to Senator Carpenter.

Q. What was that for? A. Same subject.

Q. Same subject? Those were the public topics? A. Those are all that I remember, Sir, now.

Q. Now, about how long after this 23d of May introduction, or after this 22d of May visit, was it before you wrote this Life of Mrs. Woodhull? A. That is, do you inquire concerning the interval of time between my—between Mrs. Woodhull's card of May and the writing of that?

Q. Yes? A. This was written about the first of September, I think, the same year.

Q. Along after—the same year? A. Yes.

Q. And when was the subject of writing it first introduced to you? A. Well, shortly before it was done, I think.

Q. And in that time, that space of time, you had become very well acquainted with her, had you not? A. Well, Sir, I thought I was

Q. Her traits of mind and of heart, disposition, and her relations and purposes toward the good of society, etc.? A. I thought I understood them, Sir; but I found I was mistaken.

Q. You afterward found you were mistaken? A. Yes, Sir.

Q. But then you thought you understood them well? A. I made the same mistake in her that I had in Mr. Beecher.

Q. Now, here is a marked copy, “Exhibit D. 56;” just look at that while I read from this——

Mr. Beach—Well, Sir; what do you propose?

Mr. Evarts—Well, you will hear in a minute.



Mr. Beach—You propose to be reading from something?

Mr. Evarts—I do.

Mr. Beach—Well, what was it you propose to read from? I want to know. [To the Court.] I ask the counsel what he is proposing to read from; he has not the kindness to answer me.

Mr. Evarts—No; I had the kindness to answer you, which was that you would hear when I made my question; I am going to make it now.

Judge Neilson—It will appear in the question. Well, let us see.

Mr. Evarts—Please listen to this passage which I read to you, and say whether it is your composition, and expressed the sentiments, as you then held them, about Mrs. Victoria Claflin Woodhull?

Mr. Beach—I object to that, Sir, as immaterial. Counsel, I understand, is reading an extract from the life of Mrs. Woodhull, which your Honor has once excluded.

Mr. Evarts—Yes; but excluded, I think, on the ground that it did not follow that a person was responsible for the opinions expressed in the biography of this or that person, and, to meet that difficulty I am asking him whether he did write this, and whether it expressed his opinions as he then had them.

Mr. Beach—It was not upon that ground alone that your Honor ruled. Your Honor ruled that his expression of opinions in regard to the character or mission of Mrs. Woodhull were immaterial, incompetent evidence. I do not understand, Sir, that the opinions which this witness entertained of that lady, at any particular period of her public or private career, are at all important in this investigation; and I understand that to be the sentiment which your Honor entertained at the time we had the discussion over the admission of the Life.

Mr. Evarts—We have had no ruling, and it would be quite contrary to the course of this evidence to hold, and your Honor has given no such intimation, I am sure, as that an exposure of this witness's relations to these opinions and these votaries of them, was not an important part, of greater or less importance, as it may be, in this case. The point was that, although I had identified Mr. Tilton as the writer of this Life and the publisher of this Life, yet that I could not read from that Life as evidence of what his opinions and views concerning the private and public relations of this lady were, because the mere printing and publishing, as my learned friend said, of a history, did not prove that the writer entertained those opinions concerning the history, or approved the facts that he narrated. There are some passages in this Life, that, with your Honor's permission, I propose to read, as expressing in terms, this writer's opinions concerning this lady and her character, and her principles; and to ask him if those were not his real opinions at the time, and thus avoid the difficulty of doing injustice to him, by treating a literary production as if it were an avowal of his own sentiments.

Judge Neilson—My ruling had this additional basis; to wit: that it appeared before us that her husband had prepared this document; had made a draft of it; perhaps, not being a writer, he had left it in a rude state, and, as we may suppose, the witness put it in a style fit for publication. That had something to do with my ruling.

Mr. Evarts—That was the original view presented; but this witness displaced that view by his own statement of the way that he wrote the paper—that he wrote it "all in a heat"; that it was not a correction of the manuscript, but he wrote it and presented it to the lady, and she pronounced it a failure; he made it better, and then she pronounced it perfect.

Judge Neilson—She pronounced it a failure, because he had omitted some extravagant parts which her husband had put in, and which she wanted replaced. If this were only a single question, I would be disposed to allow it. Do you intend to go into the whole matter?

Mr. Evarts—No, I intend to confine myself to a few points of this writer's opinions concerning this lady.

Mr. Beach—I don't understand how this becomes evidence in any way. I don't entirely comprehend the view with which it is offered. The plaintiff appears as a witness on the stand. I suppose this evidence is offered with a view to impeach his credibility. They propose to show, by the evidence now offered, that this witness eulogized this lady in a review of her course and career. How do we know, Sir—what evidence is there in this case to show what were her sentiments, or what was the conduct of this lady?

Judge Neilson—Up to that point of time.

Mr. Beach—Yes, Sir; up to that point of time. How are they laying the foundation to impeach the credibility of the witness, by proving his opinions or sentiment of the conduct of a woman, whose sentiments or conduct are not the subject of proof before the Jury, where the Jury must be held to be entirely ignorant of the subject of the biography? It is a simple proposition to prove a eulogistic history of a woman with whom or about whom this Jury cannot legally have any knowledge or connection.

#### THE WOODHULL BIOGRAPHY ADMITTED.

Judge Neilson—If we receive this, we are to receive it as if he read some expressions from a newspaper, and asked the witness if those were his sentiments.

Mr. Evarts—If he was the author of them, and if they were his sentiments.

Mr. Beach—If it is proposed to read something that has not a legitimate and material effect upon some material issue in the case, as the credibility of the witness, or some other issue, it is totally immaterial and inadmissible. Now, I ask, your Honor, what legal effect will it have upon any aspect of this case, or upon any party or witness in this case, to prove that Mr. Tilton, in this publication, approved of the character or conduct of Mrs. Woodhull? What knowledge—what legal knowledge have we of Mrs. Woodhull? What representation has been given here which should render the testimony of this witness entitled to less credibility because he had connection with Mrs. Woodhull, or association with Mrs. Woodhull, in any way. There is no evidence at all Sir. I do not understand the counsel to propose to give any proof in regard to that. Your Honor or the jury cannot take judicial information as to the tenets or career of Mrs. Woodhull; and in that sense, I submit to your Honor, it is entirely immaterial evidence, unless my friend intends to go further

and enlighten us somewhat in regard to the doctrines and course of life of this lady.

Judge Neilson—I think we will take the answer to the question, and you can have your exception, Mr. Beach.

Mr. Evarts—You have this life? A. I never wish to see it again.

Q. The heading is "Mr. Tilton's account of Mrs. Woodhull." You gave that title to it? A. That is the biography.

Judge Neilson—That is not properly a part of your inquiry; not necessarily a part of your inquiry.

Mr. Evarts—No, it is not a part of this inquiry. I read:

I shall swiftly sketch the life of Victoria Claflin Woodhull, a young woman whose career has been as singular as any heroine's in a romance, whose ability is of a rare and whose character of the rarest type; whose personal sufferings are of themselves a whole drama of pathos; whose name (through the malice of some and the ignorance of others) has caught a shadow in strange contrast with the whiteness of her life; whose position as a representative of her sex in the greatest reform of modern times renders her an object of peculiar interest to her fellow-citizens; and whose character (inasmuch as I know her well) I can portray without color or tinge from any other partiality save that I hold her in uncommon respect.

Q. Did you write that, Mr. Tilton. A. I did, Sir.

Q. And did that, as I have thus read it to you, express your opinions as then entertained? A. When I wrote that biography I believed a good portion of it; I made an extravagant statement of it with a view to conduce to the purpose—

Q. For rhetorical effect? A. No, Sir; not for rhetoric.

Q. For what? A. I have already told you that Mr. Moulton, Mr. Beecher and I were set on the enterprise of handling and controlling that woman, and I believed, to a considerable degree, during my early months of acquaintance with her, that she was much traduced. I did not believe in her extravagances.

Q. I am speaking of the period when you wrote this? A. I wrote that in the first months of my acquaintance with her.

Q. You wrote it in September? A. Yes, Sir; and I had been acquainted with her three or four months.

Mr. Beach—The gentleman has succeeded in interrupting the answer of the witness.

Mr. Evarts—That is my right.

Mr. Beach—No, he has not the right to interrupt the witness's answer.

Judge Neilson—If the answer is responsive?

Mr. Beach—It was responsive.

Mr. Evarts—That is a matter of opinion.

Mr. Beach—Let us hear the answer of the witness.

[The TRIBUNE stenographer read the question and answer.]

Mr. Beach—[To the witness]: You had got so far; now finish your answer.

Mr. Evarts—We will see about that. My question was if he wrote that and if these were his opinions at the time.

Judge Neilson—He stated they were, in part, and in part they were not.

Mr. Evarts—That is a certain point of time. Now, how he came to have those opinions is nothing to do with the ques-

tion. The point is whether he held them when he wrote them.

Judge Neilson—The witness has answered that he did in part and in part he did not.

Mr. Beach—He went further; the witness said that he wrote extravagantly with a view to conduce to a certain purpose. The question counsel then presented to him was, "With a view to rhetoric?" and he answered, "No," and he went on explaining the view with which he wrote it, in answer to an interrupting question put by the counsel.

Judge Neilson—I think that is proper that we have down.

Mr. Beach—No, Sir; it was interrupted.

Mr. Evarts—That is down, and then I was going on—

Mr. Beach—This is most astonishing. Your Honor heard the question and the answer read, and the interruption, and it was right for the witness to explain.

Judge Neilson—But still the question is if he has not substantially answered the question; I think he has.

Mr. Evarts—[To Mr. Beach.] You can draw it out further on re-direct examination.

Mr. Morris—But is it not the right of the witness to answer fully?

Judge Neilson—I believe he has answered that he did believe it in part, and he did not believe in the extravagancies.

Mr. Fullerton—He went on further and said that himself and Mr. Beecher and Mr. Moulton had agreed upon a line of conduct with reference to this woman, and in making the explanation he was interrupted.

Judge Neilson—He said that and it is down.

Mr. Fullerton—One-half of what he said is down and the rest of it is not down on paper.

Mr. Evarts—That is only a reproduction of what he said on his direct examination. He referred very clearly to that before. Now, I will read this extract. [Beginning to read]:

Judge Neilson—Turn over a page or two, Mr. Evarts. [Laughter.]

Mr. Evarts—Oh! yes, Sir; I have but very few passages to read, and this is quite short. Please listen to this and see whether you wrote that, and whether it expressed your sentiments at that time. [Reading]:

One of her texts is, "I will lift up mine eyes to the hills whence cometh my help—my help cometh from the Lord who made Heaven and Earth."

The Witness—I believe in that.

Mr. Evarts [continuing to read]:

She reminds me of the old engraving of St. Gregory dictating his homilies under the outspread wing of the Holy Dove.

Did you write that? A. I did.

Q. Did it express your sentiments at the time? A. That was not a sentiment; it was a reminiscence of a picture that hangs in my library; that is to say a woman who had this text (she had it written somewhere on a card over her desk), and it reminded me of that picture; any one who could habitually live with such a text as that, and whose life, whether truly or falsely, pretends to be guided by such a text, reminded me of a picture in my library of St. Gregory dictating his homilies under the outspread wing of the Holy Dove.



Q. You knew that lady, and had known her for months? A. Yes, Sir.

Judge Neilson—He says that reminds him of this picture,

Mr. Evarts—That is what he said—that it reminded him of the old engraving of St. Gregory.

Mr. Fullerton—It is not worth while to let us have it again; if there is any other question to put, let us have it and make some progress.

Judge Neilson—He has answered that.

Mr. Evarts—Please listen to this, and say whether you wrote it, and whether it expressed your views concerning her and her opinions, as you then entertained them:

On social questions, her theories are similar to those which have long been taught by John Stuart Mill and Mrs. H. B. Stanton, and which are styled by some as free-love doctrines, while others reject this appellation on account of its popular association with the idea of a promiscuous intimacy between the sexes—the essence of her system being that marriage is of the heart and not of the law, that when love ends marriage should end with it, being dissolved by nature, and that no civil statute should outwardly bind two hearts which have been inwardly sund-red; and finally, in religion, she is a spiritualist of the most mystical and ethereal type.

Did you write that, or did that express your views concerning her opinions as you then entertained them? A. I wrote that, and I think that is an accurate statement of her opinions as she then held them; that is not an expression of my opinions, but of hers.

Q. That is a statement of her opinions as you understand them? A. Yes, Sir; when that statement was made she had never made any extravagant utterances on the subject of free-love: she always quoted Stuart Mill and Mrs. Stanton as her exemplars.

Q. Now, please answer this, which I am happy to say is the last sentence of the biography, as well as of my inquiries:

Known only as a rash iconoclast, and ranked even with the most uncouth of those noise-makers who are waking a sleepy world before its time, she beats her daily gong of business and reform with notes not musical, but strong, yet mellows the outward rudeness of the rhythm by the inward and devout song of one of the sincerest, most reverent, and divinely-gifted of human souls.

Q. Did you write that, and did that express your opinions then? A. I wrote that, Sir; that is no part of the extravagances in the sketch; it culminated in that.

Q. And that is the end? A. Yes; I had not so high an opinion of her as that, Sir.

Q. But still your opinions were in that direction, though they did not get so high? A. What, Sir?

Q. Your opinions were in that direction, although they did not reach so high? A. No, Sir; that was part of the design; that was part of the little sketch, to make it thoroughly acceptable to her, so that it might accomplish its service.

#### COUNSEL MAKE A CORRECTION.

Mr. Fullerton—There is one question here in reference to the publication in *The Graphic*. You asked whether there was not an omission in the Catherine Gaunt letter. You spoke of *The Graphic*. I find *The Graphic* here and the part

which was omitted is lithographed. I think the witness ought to answer the whole question.

The Witness—I respectfully ask the Court that Mr. Evarts may do me justice in respect to the Catherine Gaunt letter.

Mr. Evarts—It is not necessary; I stated that when the publication in *The Graphic* was produced it would of course speak for itself.

The Witness—I desire also, Mr. Evarts, that it shall speak for me. Be kind enough to inform the jury that it was there lithographed as it was written exactly. I would do the same for you under the same circumstances.

Mr. Evarts—I will do exactly as I said I would, that when *The Graphic* was produced with it in I would present it. That I will do.

The Witness—Thank you.

Mr. Evarts—But I looked over what appear to be a reproduction of *The Graphic*—what do you call them?

The Witness—*Fac-similes*; it is an exact one.

Mr. Evarts—And the Catherine Gaunt letter is not among them in this book.

Mr. Fullerton—That is the difficulty. That book no one seems to be responsible for; it is *nullius in verba*.

Mr. Evarts—That I agree to. I do not want to hold any one responsible for it; it was the only material we had.

Mr. Evarts—Now, this is *The Graphic* of September 18, 1874, and that was the first, perhaps the only issue of this? A. That is the only time I ever published the Catherine Gaunt letter, and that publication is correct.

Q. Now, look at that paper, and say whether it is the issue of *The Graphic* in which the publication—the lithographic publication or *fac simile* publication of certain letters was made by you and at your request? A. It is, Sir.

Q. And were any such papers so published as *fac similes* in any other issue. Do you know whether that included all, or were there any others? A. There were very many documents published in *fac simile* in connection with Mr. Moulton's statement. This letter was published in connection with mine.

Q. And this is the only publication of *fac similes* in connection with your statement that you made? A. Yes, Sir; this is the only time that I published the Catherine Gaunt letter, and I published it exactly correct.

Q. That speaks for itself. But my point is this—whether you made any other publication of *fac similes* except what is found in this number of *The Graphic*? A. I never made any other publication of this letter in *fac simile* or any other way but that which is in your hands.

Q. I do not confine myself to the Catherine Gaunt letter. Did you publish any statement or number of *fac similes* of any of the documents or papers except what are on these sheets which I now hold? A. No, Sir; the other statements were published by Mr. Moulton.

Mr. Evarts—Now I have it. Now, the letter, as here *fac similes*, contains the omitted passage and the omitted word "any," and it answers entirely I presume to the original letter. This is *The Graphic* of September 18, 1874.

The Witness—I thank you, Sir.

Q. Now, you furnished this? A. I did, Sir.

Mr. Evarts—I suppose this had better be marked.

Mr. Beach—Oh! no, for Heaven's sake; there are enough.

Judge Neilson—The statement is taken in evidence.

Mr. Evarts—It may be marked for identification.

Mr. Beach—There will be no trouble about it.

Judge Neilson—The stenographer has down the date of the paper, probably.

Q. Now, after this September publication of yours—this was published in *The Golden Age* and *Golden Age Tracts*? A. It was not published in *The Golden Age*.

Q. Published in *The Golden Age Tract* alone? A. Yes, Sir.

Q. Was there a larger circulation of them? A. I don't remember about that.

Q. You know there were a good many thousand of them distributed by you?

Mr. Fullerton—We object to that.

Judge Neilson [To the witness]: You may give the general fact.

Mr. Fullerton—How does it become material in this case?

Judge Neilson—I don't see, but still I think we will take the general fact.

Mr. Evarts—Were there a good many thousand of them sold?

A. No, Sir. I think not, Sir; I think that it was reprinted in the newspapers; I don't think very many copies of the tract were sold.

Q. The market was spoiled by reproduction in that way? A. No, Sir; I don't know whether the market was spoiled or not.

Q. You presented it in that light, that it was multiplied in the newspapers, and so there were less sales than there might have been? A. You can judge of that as well as I, Sir.

Q. You brought it out. You said it was published in the newspapers. In what connection did you bring that out? A. In answer to your question.

Q. Bearing on the question of the sales in this form? A. No, Sir. You asked me how widely it had been circulated. I didn't understand you to ask me how widely it had been sold.

Q. Yes, Sir? A. I don't remember that the sales amounted to very much.

Q. Do you remember that they were announced in your paper as having been sold to the amount of twelve thousand? A. Copies?

Q. Yes, Sir. A. I do not remember.

Q. Do you remember what the emoluments were from the publication?

Mr. Fullerton—Is that proper?

Mr. Evarts—Why not?

Judge Neilson—I do not see.

Mr. Beach—Why is it? I cannot see what it has to do with the issue.

Mr. Evarts—It is not of itself very material. It is a single circumstance. It is not very material, but it is good evidence, I suppose.

Mr. Fullerton—I don't see that it has any allusion to this.

Mr. Evarts—You don't see any application of the Woodhull matter to this case, I suppose?

Mr. Fullerton—No; I did not.

Mr. Evarts—That is the difficulty. We passed that a long while ago.

Mr. Fullerton—It was a matter got up by Mr. Beecher, the witness and Mr. Moulton.

Mr. Evarts—I don't care enough about it, if you object to it.

Judge Neilson—The question assumes that there were emoluments, and there may not have been any.

#### THE STEINWAY HALL SPEECH.

Mr. Evarts—If the objection is insisted upon, I will waive the question. [To the witness]: Now, Sir, you made a speech at this Steinway Hall meeting, at the opening of it. A. I said a few words, which Mr. Moulton quoted the other day.

Q. Can you give that speech? A. No, Sir; nor any other that I ever made.

Q. You cannot give it, then, from memory now? A. No, Sir.

Q. Did you hear it as given by Mr. Moulton the other day? A. Yes, Sir.

Q. How did that reproduction of it strike you, from your own memory of it? A. Well, Sir; it struck me as being a very fair one.

Q. Now, do you remember an interruption or disorder occurring at that meeting at which you intervened. A. I have a dim recollection that somebody in the gallery tried to interrupt the speaker, and I stepped forward and made some remark; I have forgotten what.

Q. Let me see if I can recall to you a passage in the speech—in the lecture, if it was a lecture—of Mrs. Woodhull. Do you remember her saying in the course of this lecture or address, that Congress ought to pass a law liberating all persons from their marriage relations, and leaving them to seek such affinities as they pleased? A. No, Sir.

Q. And that on that there arose disorder in the audience? A. I don't remember any particular passage in the speech whatever.

Q. You cannot say whether that was the one on which that disorder arose. A. No, Sir. The scene that arises in my mind, in reference to your question, was an interruption by some persons who tried to interject some remarks, and my recollection is I said; "Wait until the speaker gets through, then there will be an opportunity for any one to reply." That is my recollection of it.

Q. My question is whether that interruption—which was one of dissent or disapprobation, was it not? A. Yes, Sir.

Q. My question is whether that interruption was not upon her promulgation of that proposition? A. I don't remember at what particular point the interruption was.

Q. Do you remember whether your call or statement to the audience was, that you knew what was in, or to be in her address, and there would be nothing worse in the rest of it than what she said, and that they might as well hear her through? A. Oh! No, Sir; I didn't know what she was going to say.

Q. Did you or not have in your hands the slips of her speech while she was delivering it? A. No, Sir.

Q. You did not? A. No, Sir.



## THE WORLD CARD.

Q. Now, as I understand you, Mr. Tilton, your acquaintance and intimacy, of the degree that it had attained with this lady, would have continued, for aught we have now heard, except for this "Tit for Tat" article coming up? A. I cannot answer as to that, Sir.

Q. That is the only interruption that you have spoken of? A. Well, when the interruption came, that ended it.

Q. Well, we know you said so. Now, Sir, after the publication of this card of Mrs. Woodhull in *The World* in May, did not that publication attract comment and scandal concerning Mr. Beecher and your family? A. I don't think it did. I don't now remember that the card attracted much attention, and I cannot recall any instance of any person, outside of the very intimate circle of my acquaintance, who had any idea to whom that was pointed.

Q. Very well. That was the happy state of things, was it not, in the community in that regard, that nothing was moved or agitated by that card? A. I cannot say.

Q. So far as you knew, or so far as you observed, nothing material? A. I cannot say the card produced no impression.

Q. Nothing material—nothing that occasioned solicitude or attention from you? A. No, Sir; I think not, because the threat which the card contained had not been carried into execution.

Q. We have heard the card. No harm came from it.

Mr. Fullerton—[To the witness]: You don't understand his (Mr. Evarts's) question.

Mr. Evarts—[To Mr. Fullerton]: Anything you want with me?

Mr. Fullerton—Yes, Sir. [To the witness.] You don't understand his (Mr. Evarts's) question. He was answering it when you (Mr. Evarts) used another word, whether it occasioned solicitude or attention from him.

The Witness—I understood you to ask, Mr. Evarts, whether the publication of Mrs. Woodhull's card in 1871, with these blind allusions to Mr. Beecher and to Mrs. Tilton, produced public comment.

Mr. Evarts—Yes, Sir, produced any comment, and then I used another word, or attracted any solicitude or attention on your part? A. On my part?

Q. Yes, Sir. A. Oh! it attracted great solicitude on my part.

Q. It is not whether the card attracted it, but whether anything arose. You told us about the card, and your going there. Now, did there follow from that, in the comments of scandal, anything that excited your solicitude or attention? A. My impression is that in *The World* newspaper some time afterwards there were some references very pointed, and still rather blind, at Mr. Beecher—mischievous articles, which some people might understand, and which the great public might not; I have a recollection of that sort.

Q. But still nothing that came to any head? A. I don't know what you mean by coming to a head.

Mr. Evarts—Well, I cannot explain. It is one of those things—

Mr. Fullerton—That no fellow can find out.

## MR. TILTON'S SIGNIFICANT POEM.

Mr. Evarts—That no one can make any more simple. [To the witness.] Now, when did you publish "Sir Marmaduke's Musings?" A. The poem bears its own date.

Q. Well, I know it does, but I don't know that it appears it was published at that time or not. It was published about the time it is dated—about the time of its date it was published? A. Oh! yes, Sir, somewhere about that time.

Q. So I supposed. Now, at this date, November, 1871, there was a condition of quiet and freedom from agitation about this scandal, was there not? A. The scandal had not yet been made public. It was not made public until a year afterwards, until Mrs. Woodhull's tale of November, 1872.

Q. This affair had reached no further than Mrs. Woodhull's card, and no public attention had followed from that card to your family or Mr. Beecher's? A. Well, Sir, I cannot say that no attention had; I don't think the newspapers spoke in an unkindly manner, either of Mr. Beecher or of Mrs. Tilton, in consequence of Mrs. Woodhull's card of May, 1872. How far private talk goes, I cannot understand.

Q. What you didn't hear you cannot speak of; but you knew of no public attention to it? A. No, Sir, not such as followed a year after.

Q. Where did you publish this poem of yours? A. In *The Golden Age*.

Q. And published it under your own name, did you not? A. No, Sir.

Q. You did not? A. No, Sir, as you will see by looking at it.

Q. I do not find anything here. A. It is over my own name, Mr. Evarts.

Q. Oh, well, well; as matter of fact, without discussing the criticism, it is under your own name as it is here.

Judge Neilson—[To the witness.] It is put out with your name?

The Witness—Yes, Sir.

Mr. Evarts—Now, it reads here: "Sir Marmaduke's Musings, by Theodore Tilton," and then follows the poem? A. Yes, Sir; it was not published in that way by me.

Q. You signed it? A. Yes, Sir.

Q. Now, was this in its conception by you a personal experience of yours that you meant to put forth? A. Well, Sir, I suppose that the only answer I can give to that is that every man who writes must write out of the fountain of his own experience. How far that is fanciful, how far it was personal at the time of its composition, I could not at this late date say. It must be judged, as all literary productions are judged, taking their color from the mood of the writer, from his experience of life, hope or despair.

Q. Well, do you mean to say that there is no part of this poem that in its conception took yourself and your experience of life as its subject? A. Yes, Sir, one stanza.

Q. And only one, you think? A. Well, one in particular, and the others in a modified form.

Q. Very well. Now, we will see. I will read you this clause and see whether that includes your personal experience? A. If you will allow me to say, at the beginning, the subject of that

little poem was to express, in the form of a soliloquy, the grief and sorrows of a man utterly broken down in every one of the points in which a successful life might have been continued as a success.

Q. And which are named here? A. Yes, Sir.

Q. Very well, I suppose so. I will ask your attention to this phrase, and see if it was to that intent:

I won a noble fame,  
But, with a sudden frown,  
The people snatched my crown,  
And in the mire trod down  
My lofty name.

Was that an expression of your sentiments in regard to yourself and your own position? A. No, Sir, not in any other degree than as a hint or suggestion of a man who had stood well with the public, and who had lost something of the tribute which the public had theretofore paid to him.

Q. Of course I do not mean to hold you for mere poetic license or expression. Now, this:

I bore a bounteous purse,  
And beggars by the way  
Then blessed me day by day,  
But I, grown poor as they,  
Have now their curse.

Was that also an expression of your sentiments? A. That is poetic license.

Q. A little extravagant? A. Yes, Sir; for I never bore a very bounteous purse, and I don't think any beggar ever had any occasion to curse me. [Laughter.]

Judge Neilson—[To the audience]: Now, be quiet.

Mr. Evarts—

I gained what men call friends,  
But now their love is hate,  
And I have learned, too late,  
How mated minds unmate,  
And friendship ends.

Was that an expression of your sentiments and feeling? A. No, Sir; I don't think there was anything particularly pointed in that to my case; on the contrary, my friends, perhaps, were closer to me than then ever.

#### THE POEM NOT AUTOBIOGRAPHICAL.

Q. So you think there was no appositeness in that phrase to your experience in life? A. That is to say, it was not an autobiographical transcript of my particular experience.

Q. And that carries no parallel with any experience of yours, you think? A. No, Sir.

Mr. Evarts—[reading]:

I clasped a woman's breast,  
As if her heart I knew  
Or fancied would be true.  
Who proved—alas! she too—  
False like the rest.

Did that refer to any experience of your own, as you intended to express it? A. Yes, Sir.

Q. Did you not suppose that the public who read that under your name would carry some connection from it to your wife and your family? A. No, Sir.

Q. You did not? A. No, Sir.

Q. It never entered your head? A. No, Sir; it may have been a rash heedlessness on my part to fling it before the public. If I had the slightest thought that the public would have gathered from those little lines any reproach on Elizabeth they never should have gone into print.

Q. Now, Sir, this was six months after the card of Mrs. Woodhull, in May, and was after there had been in circulation enough of imputations upon your wife to have reached Mrs. Woodhull in May, and yet you think in November following a publication by you in your own newspaper of that verse could carry no danger towards your family as being its subject. A. I will answer you, Mr. Evarts. If I had stopped to reflect that the publication of that little poem which I wrote one day on a railway train, would have led any human being to have supposed that I meant Elizabeth, I would have cut off my right hand rather than have printed it.

Q. What motive led you to print it? A. The same motive which leads me to print everything which I write.

Q. And no other or more important motive than that? A. None whatever.

Mr. Evarts—Now, we have another verse:

I am now all bereft,  
As when some tower doth fall,  
With battlements and wall,  
And gate and bridge and all,  
And nothing left.

Was that a parallel in the conception of this poem to your own experience of life? A. No, Sir; I do not think it was particularly. I had my children left.

Q. Now, Sir, as I understand it, the principal and most important trait that is included in that poem is the verse that refers to your deceit in love—being deceived in love? A. State that again, if you please.

Mr. Evarts—[To THE TRIBUNE stenographer.] Read the question.

THE TRIBUNE stenographer read the question.

A. Yes, Sir.

#### HINT OF A BLACKMAILING SCHEME.

Q. And you were absent on a political campaign at the time the Woodhull publication of 1872 was made, as you have stated? A. Yes, Sir.

Q. Did you ever see or hear of that publication, or any portion of it, being in slips and proposed to be published before it was published? A. No, Sir; all I ever heard on that subject was after I got home, through Mr. Beecher, who said that it had been presented to him, or at least he had been spoken in advance of its publication; and, as I understood, some blackmail had been levied on him.

Q. You have made some statement about that representation not in your direct examination.

Mr. Beach—No, Sir.

The Witness—Oh, no, Sir, I never saw any slips of it; I did not know it was going to be published.

Q. Whatever you did do, since you have begun it, we will hear now. What did you hear through Mr. Beecher about the Woodhull publication having been



brought to his notice before it appeared? A. My impression is that he made a statement to the effect that a few days before it was published some person had called upon him and notified him that such a publication was going to be made, and that he considered the call in the light of a threatening visit, and had rebuffed the man.

Q. Sent him away? A. Yes, Sir; that is the substance of it.

Q. That is all? A. I don't know who it was that made the call; my impression is that he made some allusion to that in some of his public utterances.

Mr. Evarts—Yes; in some one of his statements. [To the witness.] Now, when did you leave New York to start on this tour on which you were absent at the time of the publication? A. Well, Sir, I spent nearly all the time between the Cincinnati Convention in May and the Presidential election—nearly all the time.

Q. You mean the campaign in general? A. Yes, Sir.

Q. Well, this particular absence I refer to. How much were you in New-York in the month of October? A. My impression is that I came home after the Maine election and spoke in the Academy of Music, and then hastily returned to New-England, in order to fill up a part of the time in the State of New-Hampshire.

Q. Then you think you were not much in New-York in October? A. No, Sir; not much.

Q. Did you have any communication of any kind, either personal or by letter, with Mrs. Woodhull from the time that you broke off about the "Tit for Tat" letter until this publication of the Beecher scandal? A. Until then?

Q. Yes, Sir. A. I had not then.

Q. Well, I say until then. I am not asking you about any other thing than that? A. The last time I had any communication with Mrs. Woodhull was in April, 1872. I have never had any communication with her since, from that time to this.

Q. That is exactly what I have asked you—no written or personal communication with her? A. No, Sir; I have not had any interchange of any sort.

Q. Did she have any personal communication, or send any written communication to you? A. Not that I know of.

Q. In that interval? A. Not that I know of, Sir.

Q. It didn't come to your notice, if she did, you say? A. No, Sir.

Mr. Evarts—[To the Court.] We have reached the usual hour of adjournment, if your Honor please.

The Witness—Or, if she did, I have forgotten it. At all events, I have never made any answer to any.

Judge Neilson—[To the Jurors.] Please attend to-morrow morning at eleven o'clock.

Mr. Mallison [the Clerk]—The Court now stands adjourned until Wednesday morning at eleven o'clock.

## TWENTY-THIRD DAY'S PROCEEDINGS.

### CROSS-QUESTIONING NEAR ITS END.

THE WOODHULL RELATIONS FURTHER PROBED—MR. BOWEN'S PARTICIPATION SIFTED AGAIN—DETACHED LEAVES OF THE "TRUE STORY."

WEDNESDAY, Feb. 10, 1875.

The stream of testimony to-day flowed in smoothly; it was only once or twice ruffled, and then only slightly. It became evident after the first hour or two that the cross-examination was drawing to a close. Mr. Evarts dwelt on many of the occurrences of the past four years, some of which were fresh in the minds of those who have followed the progress of the trial, while others were new. The so-called Winsted scandal was first taken up, and Mr. Evarts read a letter written in Tidioute, Penn., in January, 1870, to a Mr. Hastings, in which were explained the circumstances of Mr. Tilton's visit to Winsted, Conn., during which scandal arose.

A half hour or more was devoted to-day to Mrs. Woodhull's relations to the case, the main matter inquired about being whether the witness had heard before November, 1872, that slips of the publication in Mrs. Woodhull's paper were in existence several months previous to its publication, Mr. Tilton replied "No," squarely. He was questioned about the frequency of his calls upon Mrs. Woodhull at her office and at her home. Very close inquiry was made regarding the manner in which Mr. Tilton spent the 3d, 4th, and 5th of July, 1871, the examination being pressed to ascertain whether the witness passed a part of each of those days and one or all of the nights at Mrs. Woodhull's house. The witness did not recall any such occurrence, and insisted that he never passed more than one night under Mrs. Woodhull's roof. Mr. Tilton's reasons for publishing *fac simile* copies of his letters in *The Graphic* were asked for; he said that he had been accused of forging letters, and it was to remove that imputation that he thus printed exact copies of the originals. There was a long examination about the manner in which the plaintiff regained possession of his infant child during the time in 1870 when Mrs. Tilton was living with her mother, having left her husband, carrying the child with her.

The queries then jumped to the consideration of events four years later, and to the plaintiff's appearance before the Plymouth Investigating Committee. Mr. Evarts read from Mr. Tilton's cross-

examination on that occasion the latter's explanation, or theory, of his wife's alleged crime. Other parts of that examination were read, some of which the witness admitted, while others, he asserted, were wrongly reported. Mr. Evarts now asked Mr. Tilton if he was an expert phonographer, whereupon the witness quoted Solomon's words, "Let another man praise thee, and not thine own mouth." Mr. Evarts demanded rather sharply what Solomon had to do with this case, and insisted on Mr. Tilton's answering, which he did in the affirmative. This led to inquiries as to what letters from Mr. Beecher to Mr. Moulton had been copied by Mr. Tilton. He named some of the letters, saying that he had only copied a few. Further inquiries were then made respecting Bessie Turner, Mr. Bowen, and various interviews held during 1870 and 1871. The deprecatory and sympathetic letter of Mr. Beecher written to Mrs. Tilton subsequent to the publication of the scandal in 1872—six months afterward, Mr. Tilton says—was read by Mr. Evarts. Although this letter has been published before, its contents were listened to with evident interest by the audience.

The conversation with the Rev. Mr. Haliday, at which, in the presence of Mr. Bell, Mr. Tilton is alleged to have earnestly denied the story of the scandal, was brought by means of questions before the witness. This interview seemed to be very dim in Mr. Tilton's memory. Many of the statements ascribed to him he described as very weak, and others he could remember nothing about. The statement of Mr. Tilton in 1872, known as "The True Story," was very minutely considered. It appears that, besides the paper shown to various persons, there was an original draft, which only a few saw. This, Mr. Tilton says, was destroyed when the other copy was made. The second copy, the witness testified, was shown to Wm. C. De Witt, Geo. A. Bell, Gen. Tracy, Franklin Woodruff, John W. Harman, and a few others. The original draft Dr. Storrs, Mr. Clark of *The Golden Age*, and others saw, either in whole or part. Mr. Tilton last saw the second copy in the Spring of 1873, when he gave it to his wife. She told her husband (he says) that she had destroyed it, but after she left his house he found a few of the last pages in a bureau drawer.

Afterward the attention of the witness was turned back to January, 1871, when he contemplated the publication of Mr. Bowen's letter. His reasons for this purpose, he said, were that on his lecture-tour in the West many scandals were circulated, arising

from his separation from *The Independent* and *The Union*, and it was reported that he was an embezzler, had been divorced, etc. The people demanded an explanation, and he wished Mr. Bowen's letter published to clear his name. The tripartite agreement was next put to the test, and the manner of its composition again investigated.

One of the numerous good points which Mr. Evarts daily makes, and which from their very dryness frequently pass unnoticed by the audience, was put to-day when Mr. Tilton so far forgot himself as to violate a rule in the use of language which he laid down to Mr. Evarts on the day before, at the risk of being captious, namely, in the signification of the words "certain" and "sure." The witness said that he was "sure." "'Certain,' you mean," said Mr. Evarts. But Mr. Tilton continued, apparently oblivious of the correction of the examiner, who was obliged to laugh heartily at his own joke, while Judge Neilson's eyes twinkled with merriment.

## THE PROCEEDINGS—VERBATIM.

### THE WINSTED SCANDAL.

The Court met at 11 a. m., pursuant to adjournment. Theodore Tilton was recalled and his cross-examination resumed.

Mr. Evarts—Mr. Tilton, you were to attempt to verify the question of whether that was a correct date or a mistaken one. [Showing witness a letter.] A. I have done so, Sir.

Q. What date was it? A. I will give it to you, Sir. [Referring to a memorandum book.] What is the date of that letter, Mr. Evarts?

Q. The date is January 8, 1869—Tidioute, Pennsylvania, January 8, 1869? A. Yes, Sir. Well, I have consulted a memorandum book of my lecture season in 1868-'9 and find that on January 8, 1869, I was at the Ohio University, Delaware City. I find also on application to Mr. Mumford, my lecture agent, that I was at Winsted—or rather that I was at Tidioute, Pennsylvania, January 8, 1870; also that I was at Winsted December 28, 1869.

Q. December 28, 1869? A. Yes, Sir.

Q. Then you say that the proper date of that letter should have been— A. Should have been 1870; yes, Sir. It must have been just such an error as you pointed out, customary with writers at the beginning of a new year.

Mr. Evarts—I will read this letter. [To Mr. Fullerton.] Have you seen it?

Mr. Fullerton—Yes, Sir; I have seen it.

MR. TILTON'S EXPLANATION OF THE WINSTED SCANDAL.

Mr. Evarts [reading]:

TIDIOUTE, Pa., Jan. 8, 1869.

MY DEAR MR. HASTINGS: The "lady" to whom you refer is a young school girl who was spending a holiday vacation at our house, and who, since I was not going to lecture any nearer



New-York than Winsted, went with me to that place to hear the lecture.

Arriving at Winsted (where I *expected* to be sent to a private house), I was put into a room in the hotel which had fire, and *she* into one which had no fire. I could not exchange rooms with her, for I could not be without a fire myself. So I called for two rocking chairs, and she sat at my stove and read to me till I throw myself on the bed and went to sleep.

This was in the afternoon—just after dinner.

Pretty soon some gentlemen called (perhaps yourself—for I cannot remember names), and I went to the church to fix the platform, then went to the scythe factory, and about town, hardly returning till near dark, or very late.

Meanwhile the "lady" had gone to sleep and wakened again, and was sitting by the stove when I returned.

If any servant saw her with her "dress unbuttoned," it must have been while she was asleep, and when he took advantage of my absence to intrude upon a young girl in a lone and strange place.

I never saw her with her "dress unbuttoned."

Shortly after my return from the scythe factory, the minister called to see me, and it was then that I ordered cider, and we drank it together—all three of us. He remained with me till the lecture, and after it was over took my young companion and myself to his own house, gave us supper and more cider, and accompanied us back to the hotel, when, without going into my room at all, the child went straight to bed in her own, and I saw no more of her till morning. But perhaps the *servant* stole in upon her a second time, and saw her with her "dress unbuttoned."

I wish you would say to the proprietor of the hotel (for I cannot recall either the name of the place or the house) that his servant who would thus treat his master's guests—and who, particularly, would associate such indelicate thoughts with a mere child—and who would tattle concerning what he saw in rooms whose occupants themselves summoned him in freely, is what, among honorable men, passes for a *sneak*.

This, since you ask for it, is the exact statement of the case.

I am yours, truly,

THEODORE TILTON.

[Marked "Exhibit D, 101."]

Q. Now, Mr. Tilton, that is the matter that is known and has been spoken of as the Winsted imputation, or scandal, or whatever it has been called? A. Yes, Sir.

Q. And it was more recent in its relation to the period of December, 1870, than you had supposed, is it not? A. Well, six or seven years ago.

Q. I thought you spoke of it in your testimony as an old story? A. Yes, Sir.

Q. This occurrence was in a year of the time that Mr. Bowen and you were talking about the charges against you? A. It seems now, by the date—by the correct date, to have been little over a year. I had supposed that it was perhaps a year or two—two or three years, somewhere in the past.

Q. I thought you said it was the 23th of December, 1869, that you were at Winsted. A. I learned that fact yesterday by telegram.

Q. Well, I know. That was less than a year from the time that you were talking with Mr. Bowen? A. Does it say 23th? Yes, it is about a year.

Q. I do not mean that it was less than a year; it was just a year, we will call it? A. The difference between Dec. 23th and 28th or 29th.

Q. This letter appears to have been written to some friend or acquaintance in answer to some inquiries or suggestions about

this occurrence, was it not? A. I cannot recall who the gentleman is, Mr. Hastings by name, to whom it is written. My recollection is of the matter that while I was off lecturing somewhere in Pennsylvania or the West, Mr. Johnson, who was then my associate in *The Independent*, had received some question from some member of a committee there—

Q. At Winsted? A. At Winsted; yes, Sir—or some statement that the story was being used to my discredit, and he wished some explanation of it. That is my recollection.

Q. And this letter was written to this gentleman, whoever he may be, in consequence of your hearing of some reproach to you in this connection, and this is given as the explanation of it? A. Yes, Sir; that is the best recollection I have on the subject, now. I had forgotten the name of the gentleman until you revived it yesterday.

Q. And at the time that you wrote that letter, of course you had a fresh recollection of the occurrence. It was written within ten days after it happened at Winsted? A. Yes, Sir; so it seems by the dates. I had forgotten that fact when you spoke of it, yesterday.

#### CIRCULATION OF THE WOODHULL SCANDAL.

Q. Oh, well, of course. Mr. Tilton, did you know or hear of the existence of slips in advance of publication of the Woodhull scandal, before it was published? A. No, Sir.

Q. Did you— A. Let me amend that, Mr. Evarts. Perhaps I did not understand your question. After my return from New-Hampshire to the interview at Mr. Moulton's house—

Q. You have told us that—

Mr. Beach—Let him finish.

The Witness—I was then informed that either slips or the story in some shape had been presented to Mr. Beecher a fortnight previously.

Q. That I understand; but you then heard it for the first time? A. Yes, Sir; for the first time.

Q. After the publication, as you have stated? A. Yes, Sir.

Q. Have you never heard that for several months before the publication of the Woodhull scandal slips of it were exhibited in the different newspaper offices of the City of New-York, or some of them? A. I have heard in late days a statement to this effect, that certain newspapers had the essence of the story, but in what shape I never understood.

Q. Well, the essence of the story that afterwards appeared in the Woodhull publication you mean? A. Well, the essence of the story of Mr. Beecher's relationships with Mrs. Tilton.

Q. Well, you did hear— A. For instance, I had heard that some gentlemen in *The Eagle* office have said that they knew the story a long while ago—had it in their office—but what the foundation for the statement is, I have never understood.

Q. Well, I have made no inquiry concerning anything except this publication that the Woodhulls made? A. Yes, Sir.

Q. Now, do you remember to have heard that that publication of the Woodhulls, as it appeared in November, in whole or in part, had been put into the shape of slips or type, and had been exhibited in some, or one, of the newspaper offices of the City of New-York other than Mrs. Woodhull's own publication office? A. No, Sir.

Mr. Beach—Well, Mr. Evarts, when did you ask as to his hearing this?

Mr. Evarts—I will follow it up, you know, as to the time, when I get the fact. [To the witness.] You say you never—

The Witness—In this way—

Mr. Beach—Wait.

The Witness—In this way—

Mr. Beach—When I ask you to wait, will you please wait? I object, Sir, to his asking from this witness whether he has ever heard this up to this day.

Judge Neilson—[To Mr. Evarts.] I think you mean prior to its publication?

Mr. Evarts—I have a right, I think, your Honor, with great submission, in a cross-examination to find out first whether he ever heard, and then find out what time it was.

Judge Neilson—Was not your inquiry confined—

Mr. Evarts—No, it was not confined in terms. The point of the inquiry will now turn upon whether I get his knowledge prior to that time, but I must submit that I am not obliged to ask him in the first instance in a cross-examination if I want to get at a fact of that kind; I may first get at the fact whether he ever heard, and then I may fix the time when he heard it.

Mr. Beach—I submit, if your Honor please, when the answer to that question might essentially be that Mr. Tilton had heard of it since publication, or within a very recent time, that it would be incompetent evidence, and therefore I submit to you that the question shall be limited to the time of publication, or before the publication.

Mr. Evarts—That would be requiring a cross-examiner to tell the witness what was the point that he wished to arrive at.

Mr. Beach—There is no necessity for any great concealment, Sir, about a question of this kind.

Mr. Evarts—Oh, I agree.

Mr. Beach—The witness is asked—is sought to be asked, and the evidence is sought to be extracted from him, that prior to this publication he had heard of the fact that there were slips in existence of the whole or part of it. Now, that is material, and that alone is material, and to present a question which calls for information or rumors after that period, of the witness, is totally immaterial.

Judge Neilson—He should distinguish, certainly. I think he may answer. I think he has answered.

Mr. Evarts—Now, Mr. Tilton. [To the stenographer.] Won't you please read the question, Mr. Stenographer?

THE TRIBUNE stenographer read the question as follows: "Q. Now do you remember to have heard that that publication of the Woodhulls, as it appeared in November, in whole or in part, had been put into the shape of slips or type, and had been exhibited in some, or one, of the newspaper offices of the City of New-York other than Mrs. Woodhull's own publication office?"

Mr. Beach—I object to your question, unless it is limited to the time prior to the publication; but I do not understand that that is related.

Judge Neilson—Take an exception.

Mr. Evarts—Now, please to answer.

The Witness—I never heard any such story as that until

within the last year or two; I think I read it in *The Brooklyn Eagle*, a statement that the story was an old story, and had been known to some editors a long time: that is the substance of what I know about it.

#### MR. TILTON'S CALLS ON MRS. WOODHULL.

Q. Now, will you be so good as to give me some notion, as near as you can, of the frequency with which you were in Mrs. Woodhull's publication office, or business office, which ever it was, during the period of time that you have assigned as the space of your acquaintance? A. I think I said yesterday that I was there very frequently; I don't know how frequently.

Q. Were you there every day? A. No, Sir.

Q. Were you there several times a week? A. No, Sir.

Q. Were you there every week? A. I do not know that I was; I went whenever occasion required it.

Q. Well, I want the fact, how often you went? A. Well, with no regularity; a good many times altogether.

Q. Now, can't you recall to your mind that you went there at least once a week on the average? A. No, Sir.

Q. During that time? A. I should not like to say that, because there was no regularity in my going; I went when occasion required.

Q. Occasion required? A. Yes, Sir; sometimes when it did not require.

Q. Do you remember whether you went habitually when you were sent for, or went spontaneously? A. I always went when I was sent for.

Q. And did you sometimes go spontaneously? A. Yes, Sir.

Q. Can you give me any notion of the number of times that you were a visitor at the house of Mrs. Woodhull during that period of your acquaintance? A. I should say, perhaps, in all, ten or a dozen; still I won't be accurate—won't be positive.

Q. Can you give us any notion of the number of times that you passed the night under her roof? A. Yes, Sir; exactly.

Q. How many? A. Once.

Q. And once only? A. Once only.

Q. And that was in September? Well, I don't know that—I don't know that you fixed the date of that. A. That was on the occasion to which I referred in my cross-examination.

Q. Yes, on the occasion. But have you fixed the date of it? A. Yes, Sir.

Q. The date of the occasion—was it September? A. It was the month of September; I do not remember the precise date.

Q. Very well, that is near enough. Now, can you tell me where you were from the 3d to the 5th of July, 1871? A. What is that, Sir?

Q. Can you tell me where you were from the 3d to the 5th of July, 1871? A. Well, Sir, I have no data in my mind to answer that question on the spur.

Q. Well, you notice that the 4th of July came in between those days? A. Yes, Sir.

Q. Now, can you tell us how you spent the 4th of July, and the day before and after it, in that year? A. Well, I do not remember, Sir.



Q. Did you spend those days, or any part of them, in the company of Mrs. Woodhull? A. Well, that I do not remember.

Q. Did you spend those days, or any part of them, at the house of Mrs. Woodhull? A. That I do not remember.

Q. Did you spend either of the nights connected with those days at the house of Mrs. Woodhull? A. I was never at Mrs. Woodhull's house on any night, save one; the one which I have named.

Q. Then, I will ask you now this direct question: whether these three days, the 3d, 4th and 5th of July, 1871, you were not in the company of Mrs. Woodhull, or at her house, and did not spend either those three nights, or one of those nights, at her house? A. I will answer part of that question, Sir, with a peremptory no; I did not spend either one, or two, or three of those nights; whether or not during those three days I saw her, I cannot at this distance of time say.

Q. Do you mean to say that, in regard to an occurrence as far back as July, 1871, and relating to the mode of spending that holiday and the days about it, you have no recollection whatever? A. I have not any, Sir, at all.

Q. None whatever? A. If anything noteworthy had occurred on that day I should have remembered it, but it is all a blank in my mind.

Q. Do you mean by noteworthy anything worth repeating? A. Anything that would be salient in my memory, Sir; anything that I should make a feature of in my thought or remembrance.

Q. Then, if you had spent those three days in her company, leaving out the nights, that would not have been a salient fact in your intercourse with that lady that would fix itself in your memory? A. That would have depended entirely on what transpired.

Q. The passage of the three days in her company, consecutively, would not have been a noticeable fact in the course of your intercourse with her that Summer? A. Yes, Sir, it would have been a very noticeable fact.

Q. Very? A. Yes, Sir—I never passed three days—

Q. Now, will you tell us whether you did or did not pass those days, or some part of them, in her company that Summer? A. Well, Sir, I never passed any three days in her company; whether or not I passed any part of three days, or fragment of three days, that I cannot say.

Q. Parts of three days—you cannot say whether you passed a part of three consecutive days surrounding that holiday in her company? A. No, Sir; I cannot.

Q. And that, if you had done it, would not have been such a noticeable fact in your intercourse with her as would impress itself on your memory? A. Yes, it would, Sir; if I had passed any considerable portion of three days with her I should have remembered it at this moment; if I had seen her in a chance way, three days in succession, I could easily have forgotten it.

Q. In a chance way? A. Yes, Sir.

Q. But would you regard a visit to her, at her own house on three consecutive days, a chance occurrence that would leave no impression on your memory? A. I think if I had gone there three days in succession I should have remembered it, because there must have been some particular occasion to have required

it, and I should have remembered the occasion if not the visit.

Q. Do you remember where Mrs. Tilton was during these three days of July, 1871? A. No, Sir; not without referring to some—

Q. She was in the country, was she not? A. I don't remember; what year do you now allude to?

Q. 1871? A. Well, I can answer that question by referring to some of her correspondence here; I think that she was at that time in Schoharie, by the date of the "Catherine Gaunt letter" which you read yesterday.

Q. Very well, that is all I want, where she was. A. I think so; yes, Sir; but that is the only way I know it; could not remember it of itself.

Q. It is immaterial to me how you know, if your recollection, the best of your memory, is that she was at Schoharie. A. Well, I know she was if her letter was dated July; but that is the only way I know it.

Q. Very well, she was at Schoharie?

Mr. Fullerton—No; he does not say that.

Mr. Evarts—Connected with the "Catherine Gaunt letter."

Mr. Beach—He says he knows by that letter.

Mr. Evarts—Well, that is not the 4th of July.

The Witness—My impression is, Sir, that in my statement there is a little letter from Mrs. Tilton, dated July 4th, Schoharie, or July 1st or 2d, Schoharie. That is the only way I remember it.

Q. But the best recollection that you have in your mind is that your wife was at Schoharie at that time? A. That is, provided those letters confirm that recollection.

Mr. Evarts—Well, no matter; if you find occasion to correct yourself hereafter, why of course you will have the opportunity to do so.

Mr. Beach—Well, he has a perfect right to qualify his answer now by reference to those letters.

Judge Neilson—Yes, he has a right to do that.

Mr. Evarts—Not in the least, I suppose; he has a right to answer my question whether he remembers where his wife was.

Mr. Beach—He says he does not remember except by reference to the date of certain letters from his wife.

Mr. Evarts—He says he has no doubt of it.

Judge Neilson—I was about to suggest to counsel that it was quite proper for the witness to add, if he wished to, she was at Schoharie, but he is aided to get at the fact by a letter of hers written from that place.

Mr. Evarts—Well, that is the way he happens to know.

Mr. Fullerton—Well, he does not say that.

Mr. Evarts—It is not of the least consequence to me what he says, if he will only say what his recollection is.

Judge Neilson—Aided by her letter.

Mr. Evarts—I don't care what he gets it by.

Mr. Beach—He answers that he has no recollection of the fact independent of the dates of these letters.

Mr. Evarts—That is all very well; but from that recollection he thinks she was at Schoharie.

Mr. Beach—Exactly.

Mr. Evarts—Very well.

Mr. Beach—That is not a recollection, it is a dependence upon the letters.

Mr. Evarts—Very well. [To the witness.] The date of the Catherine Gaunt letter is June 29th, 1871? A. I did not base my answer altogether on that letter, but also on another letter of Mrs. Tilton's, quoted in my last statement, which I think is dated July.

Mr. Fullerton—Never mind; we won't speak of anything that is not in evidence.

GEN. BUTLER AND MR. TILTON VISIT MRS. WOODHULL.

Mr. Evarts—We don't care anything about any other letters. Do you remember an occasion during that period of your acquaintance with Mrs. Woodhull in which you and she were together in the company of a lawyer of Lowell, a Mr. Cowley, in the City of New-York, either at one of your offices, yours or Mrs. Woodhull's, or any other place of meeting, in which you heard Mrs. Woodhull narrate to him the substance or subject of her subsequent publication in 1872? A. No, Sir; I was in company with Mrs. Woodhull and a lawyer from Lowell, but that lawyer was Gen. Butler.

Q. At that time were you? A. I don't remember any other lawyer, and I do not remember the person whose name you now mention.

Q. Well, I am not inquiring about Gen. Butler, you know. You have said something about him; did you mean to say that you were in Mrs. Woodhull's company with Gen. Butler during that period of your acquaintance? A. I mean to say that one evening Gen. Butler and I were at Mrs. Woodhull's house.

Q. During that period of time? A. Oh! I can't remember the date.

Q. Well, during the period of this intercourse or acquaintance between you and Mrs. Woodhull? A. Yes, Sir; I was not there at any other period.

Mr. Evarts—Very well; that is all I asked. However, if your Honor please, I have no occasion to retain this matter in regard to Gen. Butler. I made no inquiry concerning it.

Judge Neilson—I think it is proper to let it stand.

The Witness—I know no such person as you mention.

Mr. Evarts—I haven't made the least inquiry.

Judge Neilson—I know, but still it is proper.

Mr. Beach—You asked him if he meant to say that he was in company with Gen. Butler.

Mr. Evarts—After he had mentioned it.

Mr. Beach—If you go on inquiring about it, you make it your evidence.

Mr. Evarts—It is not a matter that I care anything about, only it is not introduced by me.

Judge Neilson—Except your inquiry related to a lawyer of a certain name—

Mr. Evarts—Mr. Cowley.

Judge Neilson—And his answer relates to a lawyer of a different name. It may as well stand as it is.

Mr. Evarts—Very well; it is nothing that I care anything about, only I didn't introduce it.

Judge Neilson—You are not chargeable with introducing his name here at all.

Mr. Evarts—Now, you don't recall the name, then, of any lawyer, named Cowley, of Lowell? A. No, Sir; never heard of such a name until you just mentioned it; don't know the man.

Q. And you don't remember the fact of being in the presence of some third person while Mrs. Woodhull narrated the substance of her subsequent publication? A. Only Mr. Moulton; I heard her once speak of it in his presence, and no other persons.

Q. No other persons? A. No, Sir.

Q. [Handing paper to witness.] Please look at the passage I have marked (in pencil), and see if you find in that an allusion to the Griffith Gaunt letter? A. That is an allusion to the Griffith Gaunt letter; yes, Sir.

Q. And this paper is an issue of *Woodhull and Claflin's Weekly* of May 17th, 1873, is it not? A. Yes, Sir; of 1873.

OBJECT OF THE FAC-SIMILE PUBLICATIONS.

Q. Mr. Tilton, now that we are on this letter for a moment—What induced the *fac-simile* publication of such letters and papers as were thus published by you? A. I will tell you, Sir. I had been accused by some of Mr. Beecher's friends with having forged documents; I wished that the document that I had, should be exhibited to the public as correct and genuine. I adopted this very admirable method of *fac-simile* to prove that fact.

Q. And that publication was after the commencement of this suit of yours, was it? A. I don't remember when the suit began; that publication of mine was made last September.

Q. Yes; we have shown the paper, haven't we. A. Yes, Sir.

Mr. Evarts—There is no dispute; the suit was commenced on the 19th of August, I think; is there, Mr. Morris?

Mr. Morris—I think that was the date.

Mr. Evarts—The suit was commenced on the 19th of August. [To the witness:] In the publication of the letters of yourself and your wife as now found in this book, this pamphlet, they have headings, as edited or described by the headings; did you furnish those headings?

Mr. Fullerton—One moment—I object; the fact is not in evidence.

Mr. Evarts—You object to the question.

Mr. Fullerton—I do.

Mr. Evarts—Very well; I will ask another one.

Mr. Fullerton—That is right.

Mr. Evarts—Not necessarily.

Mr. Fullerton—No; not because you do it.

Mr. Evarts—Now, Mr. Tilton, as you saw the letters as published in *The Chicago Tribune*—as you have spoken of the fact of their publication—had the headings or descriptive titles to them been furnished; and, if so, did you furnish them?

Mr. Fullerton—The same objection, Sir.

Judge Neilson—I think he may answer that

Mr. Evarts—How is that, Mr. Tilton? A. Well, Sir, it is a long time since I have seen the letters in *The Chicago Tribune*,



and I have forgotten the exact shape in which they there appeared.

Q. Did you, in advance of their publication anywhere, furnish titles or descriptive headings for them? A. I don't remember that.

Q. You don't remember whether you did or not? A. No, Sir; I don't remember whether I did it or Mr. Underhill did it, at this moment—my stenographer.

Q. You know that it was done by one or the other of you? A. No, Sir; I don't know that it was done at all. Mr. Underhill and I together—though he principally—had to do with the preparation of these manuscripts for the press; exactly how much he did, and exactly how much I did, I don't remember, and at this moment I don't remember exactly what was done.

Q. Then it is not fastened on your memory now whether in the Summer of last year, in preparing or proposing the publication of yours and your wife's letters, which was actually made, you furnished the titles or descriptive headings of those papers? A. I don't remember at this moment; no, Sir.

#### MRS. TILTON'S FIRST DESERTION OF HER HUSBAND.

Q. How long before this illness of your wife, in December (the date of which I think we fixed as commencing after the 24th of December), how long before that was it that she had left your house and gone to her mother's? A. She didn't leave my house and go to her mother's; she came home from the West, and on the day of her home-coming, I think, she went to her mother's; that is my recollection of it.

Q. As to the fact; you have not given us the date any other-wise? A. I think her return from the West was the first of December; possibly the last of November; I don't know the exact day. By the way, Mr. Evarts, I am reminded just at this point, that I wish to make a slight correction in the report of my testimony; it is concerning the report as it appears, of Mrs. Morse's conversation with me; those conversations were held during the Summer and the Fall of 1870, while she was first my neighbor, then my housekeeper; I had no conversations with Mrs. Morse after she left my house in the Autumn of 1870; I think that during the four years that followed, I never had seen her or spoken to her. I make this correction because in one of the journals, this morning—

Mr. Evarts—No matter what was the cause of the correction—you make this correction? A. Yes, Sir.

Judge Neilson—He is stating what called his attention to it.

Mr. Evarts—It is an explanation of his testimony. I have no objection to its being made. [To the Witness.] Mr. Tilton, you had among your acquaintances and contributors to *The Independent*, at that time, a clergyman, the Rev. Mr. Gilbert Haven, had you not? A. I don't remember whether he was a contributor at that time; he had been for many years a personal friend of mine.

Q. You knew him very well? A. Yes, Sir; he was one of my most intimate friends.

Q. He is now a Bishop of the Methodist Episcopal Church? A. Yes, Sir.

Q. Do you remember of his being at your house in Novem-

ber of that year, and spending some days there—spending at least one night there? A. Bishop Haven has been at my house perhaps a hundred times. I cannot say he was there in November, or at any particular date.

Q. You cannot. Then you cannot recall, perhaps, whether at the time he made that visit and spent the night at your house—about that season or in that season—Mrs. Tilton was back from the West and was at your house? A. I simply recall the fact that Bishop Haven—both before he became a bishop and after—made many visits at my house.

Mr. Evarts—I beg your pardon, I was not listening. A. I simply was saying that I recall the fact that Bishop Haven has for many years past made many visits at my house. I cannot recall the time.

Q. I understand that, and it is immaterial that you should not be able to remember. But you do not remember, as matter of fact, that at the time that Rev. Mr. Haven did make that visit to your house, about that time, in November, that Mrs. Tilton was there, back from the West? A. I do not remember that now; no, Sir.

Q. Now, upon further consideration can you or not tell us whether Mrs. Tilton did not come to your house from the West, and whether she did not remain there for at least a week or ten days before she left and went to her mother's? A. I cannot answer positively; my recollection is that on the morning she came from the West, she went to her mother's house; that on the morning she came from the West she first came to my house, and during the day she went to her mother's house, and then returned and told me that her mother insisted that she should no longer live at home.

Q. I do not care for the conversation. A. My recollection is that she then departed; whether that day or a few days after I will not be positive.

Q. When she arrived from the West did you not receive her at the cars? A. I did; I went over in the carriage and received her.

Q. To New-York? A. Yes, Sir.

Q. And she came to your house? A. Yes, Sir.

Q. She went to see her mother that day—you are sure of that? A. I think she did.

Q. And she came back to your house from her mother's? A. Yes; at all events she told me; the point I remember is that she told me of her mother's conversation.

Q. You remember that she did come and talk with you, and therefore you know that she was there? A. Yes, Sir.

Q. Now, can you recollect it was not until a week or ten days after that first return of hers, and her visit to her mother, and her return to your house from her mother's—that it was not until a week or ten days after that that she left your house and remained away? A. It may have been, Sir; I cannot testify positively.

Q. Now, how many days was she so absent and at her mother's on that occasion? A. My recollection is, two or three; I have no means of identifying the number.

Mr. Fullerton—Two or three what? A. Two or three days; that is my recollection; it may have been longer or shorter.

Mr. Evarts—Now, do you remember her coming to your office

during the time of her absence from the house or not? A. Yes, Sir; I remember sending for her to come down to the office of *The Brooklyn Union*, one day.

Q. And she came? A. Yes, Sir.

#### HOW MR. TILTON REGAINED HIS CHILD.

Q. Now, had she with her, at her mother's, in this absence, her infant child? A. I think she had, Sir.

Q. And do you remember during her call at your office, at your request, sending for the infant child, and taking it from Mrs. Morse, in your wife's absence, to your own house? A. Not during Mrs. Tilton's call at *The Union* office, Sir; I remember sending for the child very peremptorily, but it was not during Mrs. Tilton's call on me at *The Union* office.

Q. Was it not during Mrs. Tilton's absence from her mother's, upon your invitation? A. No, Sir; Mrs. Tilton made the call on me at the Brooklyn office, on a matter of business.

Q. When you sent for her? A. Yes, Sir.

Q. My inquiry is whether, during her call, and that absence thus procured, you did not send for her infant child and take it away from her mother's, and bring it to your house? A. No, Sir; my sending for the child had nothing to do with the interview, and was not at the time; at all events, it was not at that time of the day.

Q. When was it that you sent for the child? A. I cannot identify the date. I think I wrote a note; if that note exists, and has a date, that will identify it, but my memory does not.

Q. Do you remember by whom you sent it? A. I have a recollection it was sent by Miss Ellen Dennis, the housekeeper; that is, I will not be sure of it.

Q. And did she know the contents of it, and the errand on which she was sent? A. I do not remember at present.

Q. Did she bring the child to your house, and separately from the mother? A. That I do not remember.

Q. You do not remember? A. I cannot remember whether she brought the child; the child came.

Q. It did not come alone? A. No, Sir; the child came; but whether Mrs. Tilton brought the child, or not, I do not know; the circumstance is utterly indistinct.

Q. You do not remember whether the child was brought to your house upon that message? A. That I remember, Sir; but who brought the child I do not remember.

Q. And brought separately from the mother? A. I remember this—that Mrs. Morse had taken Mrs. Tilton away from her home, which I forbid, and I sent for the child—to have the child brought back—

Mr. Evarts—If your Honor please, I must insist upon the witness not putting in that which is not responsive.

The Witness—[Continuing.] But who brought the child back I cannot remember; the child was brought back at my command.

Mr. Evarts—I must object to this answer. I ask that it be— Well, it is not material. [To the witness.] And do you now remember that after this possession, acquired of the infant child, Mrs. Tilton returned to your house? A. Mrs. Tilton returned.

Q. And after you had the child? A. That I do not remember.

Q. But it was not before? A. I do not remember that.

Q. She did not come, leaving the infant child, did she? A. I have a recollection that Mrs. Tilton, about that time, went to New Brunswick, to see her daughter who was there at school.

Q. Well, what is your best recollection, Mr. Tilton? A. I have just given it to you, Sir.

Q. Is it that Mrs. Tilton returned to your house after you had possession of the infant child? A. I do not remember, Sir; the point at which my memory fails me is this—whether or not the child was brought back to my house while Mrs. Tilton was away, namely in New Brunswick; I have some recollection of that, but I don't fix the time; the child was brought to my house by my order; that I remember very distinctly.

Q. And in your wife's absence, as you believe? A. That I do not know.

Q. You don't know about that? A. No, I am not certain about it; I will not swear to it.

Q. The best recollection you have about the matter is that in the mother's absence you got the child? A. That is my best recollection; I will not make oath to it.

Q. And that after that she came back to your house? A. I don't remember whether she then considered my house her home, or not, because it all hinges on whether she was in New-Brunswick at that time.

Q. I do not ask you that. I ask whether she came to your house, not whether she thought it her home or not? A. Yes, Sir, she certainly did come.

Q. [Handing paper to witness.] Please look at this and see if that is the message that you sent for the child? A. I judge it to be so, Sir.

Q. Have you any doubt about it? A. None whatever.

Mr. Evarts—I will now read this:

"Ellen, wrap the baby very carefully and bring him home immediately.  
THEODORE TILTON.  
6:15 p. m."

Q. Who is "Ellen?" A. Miss Ellen Dennis, my housekeeper.

Q. Have you any doubt now that the baby came back under that message, and in the manner there directed? A. I have never had any doubt; I told you the child came by my order, but by whose hand I do not remember.

Q. Have you any doubt now that it came by the hand of Ellen, in pursuance of the errand on which she went? A. All I know of it is what that paper states; I know I sent for the child, and the child was brought to me.

Q. Do you mean that you have no recollection whatever concerning that transaction, except what this paper furnishes?

Judge Neilson—Oh, no!

Mr. Fullerton—He does not state that at all.

Judge Neilson—No; I understand him to say that he has no recollection of who carried the child back—whether Ellen or somebody else.

The Witness—That is so, Sir.

Mr. Evarts—Let me read the note again.

Mr. Fullerton—There is no dispute as to the contents of the letter.



Mr. Evarts—But I asked him, on refreshing his mind by looking at this letter, whether he has now any doubt that the child was brought back under that order and according to that direction?

Mr. Fullerton—I object to that—one moment.

Judge Neilson—I think he can answer that.

Mr. Fullerton—That question has been answered twice.

Judge Neilson—I think it has, but he may answer it again. [To the witness.] Have you any doubt on that subject?

Mr. Fullerton—I think it is time my learned friend should become satisfied with two answers to the same question, without requiring it to be answered a third time. But if your Honor will take notice, that has been the practice of the learned counsel.

Mr. Evarts—It is very easy to satisfy me with one answer.

Mr. Fullerton—Then you ought not to put it again. If you put it after you are satisfied, it is all the worse.

Judge Neilson—I think he may answer that.

[THE TRIBUNE stenographer was here called upon to read the question and answer as given, and the question was repeated.]

The Witness—My answer to that is, that the note does not, in the slightest degree, refresh my mind; I stated before that the child was brought back under my order; I would not now be willing to swear, after having seen the note, that the little babe was brought by Miss Ellen Dennis, because a servant might have brought the child; I have no personal knowledge as to the child having been brought back to my house by this person or by that person; my knowledge is that the child was away, and that I sent for the child, and that in obedience to my order the child was brought back.

Q. And this was the order? A. Yes, this is the order. Have I made it clear, Mr. Evarts?

Q. Were you at home when the child came. A. I don't remember that.

Q. You observe that this note is dated 6:15 p. m.? A. Yes, Sir.

Q. Now, do you not remember whether you were at home when the child came? A. I remember nothing about it except that note.

Q. Do you remember how old the child was at that time?

Judge Neilson—Counsel means about how old.

The Witness—That is a sort of problem which always puzzled me. The child was born in June, 1869, and that was December, 1870. How old would that be?

Mr. Fullerton—Nearly eighteen months.

The Witness—Yes, Sir.

Mr. Evarts—That shows how old it was. Do you remember whether the child was then sick? A. No, Sir; the child could not have been very sick or it would not have been moved.

[The note was marked "Exhibit D, 102."]

#### MR. TILTON'S ANSWERS TO THE COMMITTEE.

Q. Mr. Tilton, upon the occasion of your attendance and hearing and answering questions before the Committee of the church, please say if this occurred: Did you, upon being asked this question, "You say, Mr. Tilton, for a year after what you stated as Mrs. Tilton's confession, she insisted

to you that she had not violated her marriage vow?"— In answer to that, did you say: "Yes, Elizabeth was in a sort of vaporous, light cloud; she was between light and dark; she could not see that it was wrong; she maintained to her mother, in my presence, that she had not done wrong; she cannot bear to do wrong; a sense of having done wrong is enough to crush her; she naturally seeks, for her own peace of conscience, a verdict; she never would have had these relations if she had supposed, at the time, that they were wrong. Elizabeth never does anything that at the time seems wrong. For such a large moral nature there is a lack of a certain balance and equipoise; she has not a will that guides and restrains, but Elizabeth never does, at any time, that which does not have the stamp of her conscience, at the time, upon it." Did you say that in answer to the question that has been read to you? A. I said something like that, Sir; I do not know how accurately it is reported.

Q. Substantially, did you say that? A. There is a phrase there about her saying that she had not "violated her marriage vow." I think that as I put it was that "she thought she had not"—not that she positively insisted she had not; but the substance of that statement, I think, is very true of Mrs. Tilton. If you will let me look at it now, or read it over again—

Mr. Evarts—I will do so.

The Witness—Then I will tell you where I think it true, and where I think it is not.

Q. I will ask you another question and then hand it to you; they are connected. On this answer being made by you, so far as it was made, were you then asked this question: "Do you say that she did or did not insist that she had—" [To Mr. Fullerton.] I suppose the question should read "not" violated her marriage vow—it reads "violated" her marriage vow.

Mr. Fullerton—You must not appeal to me to know how it should read; I do not know anything about it.

Mr. Evarts—Well, in answer to the question put to you, did you say: "She always was saying that it never seemed to her wrong; and 'Theodore, I do not now see that I have wronged you'?"

A. She frequently said that during the year.

Q. Did you make this answer? That is all I have asked you I asked you what she said? A. Something like that.

Q. You did? A. I won't make oath to the words. I should like to read it a little more carefully before I answer it definitely.

Mr. Evarts—That is enough for me. We have got your answer now, and if you wish to look at the passages I have read you can. [Handing book to witness.] Look at the passage included in brackets.

The Witness—With some little corrections I would be very happy to have this statement stand, Mr. Evarts.

Mr. Evarts—Well, now.

The Witness—Shall I make the corrections?

Mr. Evarts—[To THE TRIBUNE stenographer.] Won't you read the answers?

THE TRIBUNE stenographer read the answers.

Mr. Evarts—I am satisfied with those answers; I don't ask anything further of this witness in that regard. [To the witness.]

ness } On that occasion were you asked this question, and did you make the answer that I shall read, following it? This is the question: "Q. Well, she is a character who could have an intimacy and reverence and enthusiasm for a man of Mr. Beecher's temperament and religious convictions and teachings, and carry it to an extreme length without the thought of passion or criminality? A. I do not think the thought of passion and of criminality were in her breast at all; I think they were altogether in his. I think she thought only of her love and reverence." Did you answer that? A. I don't remember whether I did or not, Sir; but if I didn't then I answer it here now. That is the truth.

Q. Were you then asked, "Such a character would not excite the thought of jealousy as to her? A. Not in the slightest; I never had the slightest feeling of jealousy in regard to Elizabeth." A. What is your question?

Q. Whether you were asked that question, and made that answer? A. I don't remember, Sir; but it is true. I had unlimited confidence in her.

Q. Were you asked this question immediately following what you have now been inquired about—this is the question: "The fact that she was manifesting this enthusiasm and all that would not lead you to suspect her motives and purity originally?" Did you answer: "It would not; later it did." A. I don't remember the latter clause of that. Evidently the answer which I gave to that question was that never until the disclosures came out had I put any other than an innocent interpretation on her relationship to Mr. Beecher.

Q. So that you say now, no; never until those alleged disclosures, did you put anything but an innocent interpretation upon it? A. No, Sir; never until then.

Q. Never until then? A. No, Sir.

Q. Were you then asked this question, and did you make this answer: "For how long a period? A. I do not know; I remember I wrote, Sir, some letters which, if she has kept them, would fix the date. There was a time when I felt that Mr. Beecher was using his influence greatly upon her." A. Yes, Sir; but that was not in any passionate way.

Q. You made that answer? A. I don't remember my answer to the Committee. I am speaking now the truth as it exists.

Q. If you made that answer, you say you didn't mean to convey it in any passionate view? A. No, Sir; I meant, Mr. Evarts, to say that until the story was told me by her own lips in July, 1870, I had put no harmful construction on her relation, having, as I have just stated, unlimited confidence in my wife.

Q. Excepting that (I do not take your answer as to anything that came from her which I have not asked about, and which the law excludes), you mean to say until the date in July, that you have referred to? A. Yes, Sir.

Q. Were you then following, and in this line of inquiry, asked this: "To control her in her domestic relations with you? A. No; but to win her. He was always trying to get her to say that she loved him better than me." A. No, Sir; that was part of the story which she told me in July.

Q. You don't admit this? A. No, Sir; that came to me—

Q. That question and answer you don't recognize? A. No Sir; I do not.

Q. Are you quite sure that the question and answer were not as they read here? A. They could not have been in that connection.

Q. Very well; that is your answer? A. But I remember her saying—

Q. Were you then asked this question: "She never would say?" and did you answer, "I don't think she ever did?" A. That is part, also, of her statement which she made to me.

Q. I don't ask you that. My only question to you is, and your answer must be confined to it, whether that question was put to you and whether you made that answer to it? A. Mr. Evarts, I have no knowledge of the questions put to me on that occasion, or the answers I made to them, other than the imperfect record in that purported cross-examination, which I repudiated, except to say that now, when you put the questions to me again, I must answer them out of my memory as to the exact truth.

Q. No, you must answer as to the exact truth about which you are asked, which is whether that question was asked you and whether you made that answer. That is all. I am not asking you whether it was true, but simply whether such a question was asked you, and whether such an answer was made by you? A. I have given you the answer I must have made to the question. Those answers, there are some of them correct and some of them incorrect; there is a great deal of bungling.

Q. I am taking your statement as to whether such a question was asked you and whether such an answer was made by you? A. Yes, Sir.

Q. That is the end of my question, and the answer to the same. It is not a question concerning the truth, but whether that question was asked and answered? A. Yes, Sir.

Q. Were you then asked this question: "You do not believe she ever felt or believed it, do you?" A. What is that, Sir?

Q. The previous subject was whether she ever would say she loved Mr. Beecher better than you, and now follows this next question. The answer, as I have read it to you, was that you don't think she ever did. You don't, as I understand it, recognize these questions and answers. Then I asked you this one. Now, following that, were you asked this question: "You do not believe she ever felt or believed it, do you?" And did you answer to that question, "No; that is to say, in one sense, she loved him. She loved his religious views; she loved him as an evangelical minister, and I don't think that, on the whole, he was as much to her as I was. Still, of course, Mr. Tracy, I cannot question her motive. If she should say he was more to her than I was, I could not dispute it." Did you hear such a question, and did you make such an answer on that occasion? A. I don't remember either the question or the answer; but what is incorrect in the answer is the phrase, "I don't question her motive." There is no sense in the phrase in that connection. What I evidently meant to say was, that I would not question her own assertion. In other words, if she should say that she loved Mr. Beecher more than she loved me, why, I would take her word for it.

Q. With that correction, do you, or not, remember that such a question was asked, and whether such an answer was made? A. No, Sir; I don't remember either the question or the answer.



## HOW MR. TILTON USED HIS SHORTHAND.

Q. Mr. Tilton, you are an expert phonographer, are you not—a practiced phonographic reporter? A. Well, Sir, I am a phonographer.

Q. And you have had a long practice in it as part of your profession? A. I studied phonography when I was a boy; I have not practiced it very much since.

Q. Didn't you, during a good many years, practice phonography? A. No, Sir; oh! well, incidentally, not professionally.

Q. Well, for some years, you did professionally? A. I have reported some of your speeches, Sir.

Mr. Evarts—Well, that would not give you much practice, for I made very few.

Mr. Beach—I don't know. They were pretty long when they were made. [Laughter.]

Mr. Evarts—Now, Mr. Tilton, will you tell us, or not, whether you are an expert phonographer? A. Solomon says: "Let another praise thee, and not thine own lips."

Q. Well, what has Solomon to do with your case? A. He is the wisest man I know of myself.

Judge Neilson—[To the witness.] The question is whether you consider yourself an expert phonographer.

The Witness—Well, Sir, I shall have to answer yes, but it is under compulsion.

Judge Neilson—Certainly.

Mr. Evarts—That will stand, and that is an answer to my question. [To the witness.] Now, during the period of the conferences and consultations and reading and hearing papers which have been spoken of in your own direct testimony, in which you and Mr. Beecher, or you, Mr. Beecher and Mr. Moulton took part, were you in the habit of making phonographic copies of all papers that were in Mr. Moulton's hands, that came to your notice or knowledge? A. No, Sir; I made some notes of some which I thought important; not a great many.

Q. Did you not habitually and systematically take phonographic copies of all papers that were brought to your notice during these conferences and consultations?

Mr. Fullerton—That is the same question right over again, precisely.

The Witness—[To Mr. Evarts.] Oh! no, Sir.

Mr. Fullerton—I am willing he should answer it; but once is enough.

Mr. Evarts—[To the witness.] You did not? A. No, Sir; I did not; I made notes of very few of them; not one-twentieth part of the whole papers. That is a rough guess.

Q. Can you state those that you did thus copy? A. Well, Sir, if you will bring me my last statement I can point out to you those which I made copies of.

Judge Neilson—He wants your present recollection.

Mr. Beach—It will probably be refreshed by his statement.

Mr. Evarts—I have nothing to do with refreshing his recollection.

Mr. Beach—[To the witness.] Then you are not bound to refresh your memory; let it be.

Mr. Evarts—[To the witness.] I will take your answer: can you state those of which you did make copies in the way that I

have inquired of? A. If you will pass the papers under review before my eye, I can tell you every one; but I cannot evoke them out of the pile and make them stand before my memory.

Q. Your memory regarding the transactions as they occurred, and the papers as they arose in these transactions, does not enable you to remember any paper that you copied? A. Oh! yes, Sir.

Q. Now, will you give me those? A. I was simply saying I should not like to recite here from memory, under oath, all the papers that I copied.

Q. I asked you to name those that you did. A. You asked me to name all; now you ask me to name one.

Judge Neilson—[To the witness.] Name those that you did copy.

Mr. Evarts—Name all that you remember? A. I made a copy of Mr. Beecher's letter of January 1st, 1871, called the letter of contrition.

Q. When did you do that? A. On the same evening when I saw it.

Q. Now, go on with any others. A. I made a copy of the letter of the 7th of February, which Mr. Beecher sent to Mrs. Tilton through my hands; also a copy of Mr. Beecher's letter of the 7th of February.

Q. And at the time, I suppose? A. At that time, which I borrowed to show to Mrs. Tilton, I made both of those; I remember that.

Q. That is the letter to Mr. Moulton of the 7th of February? A. Yes, Sir.

A. And those you made at the time? A. Yes, Sir.

Q. The copies you made at the time? A. I made copies of my own letters.

Q. You kept copies of your own letters, or made copies of them? A. Yes, Sir; for instance, my letter to Mr. Bowen of January 1st, 1871, and generally of my own letters. My impression is that of all the many letters outside of those which Mr. Beecher sent to Mr. Moulton—forty or fifty, are there not?

Q. I don't know. A. That I made a copy of a fragment of two, namely, part of the letter of June 1st, 1873, and part, or two parts, of Mr. Beecher's letter dated February something, 1872.

Mr. Morris—February 5th.

The Witness—The "ragged edge letter," as it is called.

Mr. Morris—Yes, February 5th.

The Witness—Just at this moment I don't remember making any other copy, still I won't stand on it.

Mr. Evarts—Well, I understand that. This is your present recollection? A. Yes, Sir.

Q. Now, are you quite certain that you did not copy the whole of these two last named letters—that of June 1st and that of February 5th? A. I am quite sure, Sir.

Q. "Certain," was my question? A. Yes, Sir; no, I only had parts. That letter of February 5th, 1872—is that the "ragged edge letter?"

Q. Yes, Sir. A. Yes, Sir, I had a copy of fragments of that, and afterward made the error in my sworn statement of supposing they were extracted from two different letters.

Q. Now, that is the basis of your present recollection as to your making copies of papers as they passed along? A. Well,

Sir, if you would give me all the papers, all the letters in the case, that I may take them up one by one, I think then I can tell you whether I copied this or didn't copy that.

Q. But, without that aid, this is all you can now remember?  
A. Yes, Sir.

Q. And, as I understand you, you are quite certain that, as a general thing, you did not so copy them? A. Oh! as a general thing I did not, Sir; I copied very little—very few. There was a multitudinous correspondence of four years, of which I copied a very small portion; indeed, I saw a very small portion of it.

Q. Now, did you, on this examination before the Committee, in answer to a question, make the answer which I will read:

"Q. Can you produce a copy? A. I do not know, and I am sorry I cannot tell you. I have a mass of phonographic notes. Whenever these letters came, whenever there was anything in them that Frank wanted me to see, he would read them to me. Whenever Mr. Beecher said anything that he thought, being read to me would gratify my feelings and conduce to a compromise of peace between us, speaking of the kindness with which I had treated him, or of the difficulties, Frank read them to me, and, as I wrote shorthand, I always used to make a copy of them."

A. I did not say "always;" I said I sometimes did, very rarely.

Q. You think that, in your answer, you used the word "sometimes" instead of "always"? A. Well, I don't know what I said in my answer other than what is there. I know exactly that a little handful of notes—

Q. My only question is whether you were asked that question, and whether you made that answer to it? A. It is utterly impossible that I should have said "always," because I did not always make them; I very rarely made them.

Q. That is a question of morals, whether a man may say a thing he didn't do. My question is whether you did, or not? A. Well, Sir; I don't remember either the question or the fact, telling you the fact.

Q. That I didn't inquire about; I have got through with that. Now, will you tell us what system of phonography it was that you practiced? There are systems of various names, are there not—various styles? A. Well, Sir, when I learned phonography it was called Pitman's System; I don't know that it has been changed since. My friend, Mr. Munson, has introduced some improvements, and I believe the new system bears his name. Phonography is distinct from stenography.

Q. You practiced phonography? A. Yes, Sir.

Q. And it was Pitman's system? When was it you learned it?  
A. Oh, when I was quite a boy.

Q. After you had left the Academy? A. Oh, no, Sir! long before I left the Academy.

Q. Before you left the Academy? A. When I was a boy at a public school.

#### NO LETTERS DESTROYED BY MR. TILTON.

Q. Now, Sir, have you at any time destroyed any of Mr. Beecher's letters that passed or came to your notice during these transactions? A. What is that, Sir?

Q. Have you at any time destroyed any of Mr. Beecher's letters that passed in these transactions, or came to your notice at any time? A. I never had any of Mr. Beecher's letters,

Sir. Mr. Beecher never wrote me any letters. I don't understand what you refer to.

Q. Well, I will have to repeat my question. Have you at any time destroyed any letters or papers from Mr. Beecher, that came in any of these transactions, conferences, or consultations, or came to your notice during the period between the 25th of December, 1870, and the present time? A. No, Sir.

Q. Very well. A. I never had any to destroy.

Judge Neilson—That is not necessary to the answer. Say "No;" that answers it.

The Witness—Yes, Sir.

Q. Have you destroyed any papers or letters of Mr. Moulton?  
A. No, Sir; not one.

Q. That arose in the same way and during the same period?  
A. No, Sir.

Q. Or any of your own, either to Mr. Beecher or to Mr. Moulton, or that was used or shown to either of them during the progress of this—of these consultations between you? A. No, Sir; none whatever. May it please your Honor, I think perhaps that answer ought to be amended to this extent. Mr. Moulton is in the habit very frequently of writing me two or three little lines, saying, "Dear Theodore, come around and join me at supper"—something of that sort. I never kept any such notes as those.

Judge Neilson—You have a right to qualify it.

Mr. Evarts—Oh! Of course.

The Witness—I didn't quite understand the purport of your question, Mr. Evarts.

Mr. Evarts—You understand the meaning of it now? A. Yes, Sir.

Q. You don't understand the objects you mean. A. No, Sir.

Q. Well, I didn't intend to tell you. A. Well, how can you expect me to give you a proper answer?

Mr. Evarts—Well, I don't know.

Mr. Beach—I think the object is very apparent.

Mr. Evarts—Well, the witness says it is not to him.

Mr. Beach—He attributes that to your mystery, which I do not.

Mr. Evarts—I haven't any mystery about it, not the least.

The Witness—I have just said under oath that I have not destroyed any of Mr. Moulton's letters in the last four years. I presume I have destroyed many little notes.

Mr. Evarts—Well, you may make any qualification, of course.

Judge Neilson—Well, you have never destroyed any notes or letters except little notes? A. Yes, Sir; I have destroyed no important paper.

Mr. Evarts—My inquiry was substantially, of course, confined to papers that had arisen and been the subject of consideration? A. Yes. Well, I wish to make my answer consistent with my oath.

#### BESSIE TURNER'S LETTERS.

Mr. Evarts—Of course it is entirely proper. Do you remember, Mr. Tilton, that very soon after the 1st of January, 1871, an inmate of your house, Miss Bessie Turner



as she has been called, left it and went to the West? You remember that fact? A. I remember that she went to the West, but—

Q. Well, that is all that is asked. A. You spoke of her as an inmate of my house, which leads me to say that notwithstanding the fact that I answered you a day or two ago that she had resided there until 1870, I find, on reflection, that previous to that time she had gone to a public institution of some sort, I don't know exactly what, and had also resided awhile in the family of Mr. David Dows, of New York. I think those circumstances had faded from my mind when I answered. In other words, she had not been living in my house—

Q. Continuously? A. Continuously. I don't think she was there during the year 1870 at all.

Q. That is, not continuously from the time when she first came to you until the time she left? A. No, Sir.

Q. She was not there continuously during that whole period? A. No, Sir. I don't think she had lived there for a considerable period preceding that.

Q. Now, can you give me the periods of these absences that you have now adverted to? A. No, Sir; I cannot.

Q. Can you state what year either or both of them were? A. Either or both of what, Sir?

Judge Neilson—The absences.

Mr. Evarts—The absences. Can you state the year during which either or both of the absences occurred? A. No, Sir; I cannot.

Q. Very well. A. Yes.

Q. Was it near this time of 1870? A. My present impression is that possibly, in 1868 and '69, she was away, either at this institution or at Mr. Dow's family, and then she went away to the West and was there when Mrs. Tilton was West, and returned with Mrs. Tilton from the West. That is the best recollection I have.

Q. That is, during that year 1870? A. Yes, Sir.

Q. So that your idea, so far as you have it in your memory, is that the year, 1870, was the time of these absences? A. Either that year or the year preceding, but I cannot speak definitely.

Mr. Beach—I understood him to say that his impression was that she was not there during 1870.

Mr. Evarts—I say, these absences occurred during the year 1870.

The Witness—A. Yes, Sir; my impression is, she did not reside at my house during the year 1870 nor 1869. That is my impression.

Q. Both years? A. Yes, Sir; that is my recollection?

Q. Then substantially both those years she could not be considered a member of your family? A. Yes, Sir; still I may be wrong about it.

Q. Very well; I don't know how that is; I want to get it straight before we start.

Mr. Beach [To Mr. Fullerton]—He has just started.

Mr. Evarts—Yes; on this I have just started. [To witness]—Now, before she went to the West she wrote, did she not, two letters? A. What is that, Sir?

Q. Before she went to the West, in January, 1871, or after January, 1871, she wrote two letters, did she not, which have been given in evidence here? A. Yes, Sir; I presume they are hers. I didn't see her write them. Her name is signed to them.

Q. You know what letters I refer to? A. Yes, Sir.

Q. They are in evidence here? A. Yes, Sir.

Q. And you have them in your mind sufficiently to be a basis — A. Yes, Sir.

Mr. Evarts—[To the Court.] I am reminded, Sir, by my associate and my opponent together, that it is one o'clock.

Judge Neilson—Wouldn't it be convenient to close your cross-examination before the recess?

Mr. Evarts—That would depend entirely, Sir, upon how convenient it would be to postpone the recess until I had finished my cross-examination. [Laughter.]

Judge Neilson—Will gentlemen keep their seats a moment. [To the Jury.] Please return at two o'clock.

Mr. Mallison—[Clerk.] The Court will now take a recess until two o'clock.

#### A POSSIBLE SCANDAL FORGOTTEN.

After recess, the cross-examination of Mr. Tilton was continued as follows:

Mr. Evarts—Mr. Tilton, before Miss Bessie Turner left for the West, in or after January, 1871, were any letters taken from her, written by her, except these letters that have been given in evidence—these two that I asked your attention to? A. I know nothing of any such circumstance, Sir.

Q. Of any other letters? A. No, Sir.

Q. Well, that is what I understand—that you don't know of any other letters having been taken or written by her? A. No, Sir.

Q. Do you remember, Mr. Tilton, whether, upon the occasion of the conversation between you and Mr. Bowen on the occasion when Oliver Johnson was present at a part of the interview, in December, before the 26th or on the 26th of December—do you remember whether or no, in regard to any stories about you as there made the subject of consideration, there was any reference to an occurrence with which you were charged with being connected in Northfield, Minnesota? A. No, Sir.

Q. Do you remember when you were in Northfield, Minnesota, in one of your lecturing tours? A. Could not fix the date.

Q. But do you remember of being there at all? A. Remember of lecturing there once.

Q. Now, do you remember when that was? A. I could not fix it.

Q. Which season? A. It is a good while ago; several years ago; six or seven years ago, I should think; I remember staying at the house of a clergyman.

Q. Well, I want to fix the date of that if I can, if your memory will enable you to do so. Was it in '67-8 or '68-9, or earlier? A. I could not fix that, Sir, but I think I can get the date for you by applying to my lecture agent, as I did yesterday for the date at Tidioute.

Q. Well, we will have to get the date, of course, correctly, if it is to be had at all. A. What circumstance do you refer to?

Q. Well, I go on now. You remember lecturing there, and being the guest of a clergyman there? A. Yes, Sir.

Q. And the date of that we, perhaps, would like. Well, do you remember, as among the stories or imputations, without regard to the question whether there was anything in it or not, that there was a topic or subject of imputation or charge against you in reference to your conduct while there? A. Never heard of it, Sir, until this moment.

Q. Never heard of it up to this time? A. No, Sir.

Q. And it was not a topic mentioned or referred to, so as to define it—mark it, in that conversation between you and Mr. Bowen? A. No, Sir; I have never heard anything about it until your mention of it now.

Q. Very well; you have referred to an occurrence, Mr. Tilton, upon an occasion which you put somewhere I think, from the 15th to the 20th of January, 1871, an occasion during Mr. Moulton's serious illness, in which Mr. Beecher accosted you, meeting you at the house of Mr. Moulton as he was leaving it, and saluted you with a kiss on the forehead? A. Yes, Sir.

Q. Do you remember that occurrence? A. Yes, Sir.

Q. Now, in the years of your acquaintance with Mr. Beecher, and up to the time of any estrangement at whatever date you put that fact in your intercourse, were you and Mr. Beecher in the habit of saluting one another with a kiss? A. No, Sir; we had done so in earlier years occasionally.

Q. Well, I have asked you up to the period of any estrangement between you? A. Oh, I beg your pardon: I thought you asked me during these last four years.

Q. Oh, no, I say up to the period of any estrangement between you? A. Yes, Sir.

Q. Had you been in the habit of saluting one another with a kiss? A. Not in the habit, Sir; but it had been done.

Q. Well, was it a frequent occurrence? A. No, Sir; not frequent.

Q. But it was occasional? A. Yes, Sir.

Q. There was nothing marked or unusual, was there, during the period of this friendship of yours that you should salute one another with a kiss? There was no habit, Sir; it was rather a noticeable event that any such thing happened.

#### CHRISTENING OF THE LETTER OF CONTRITION.

Q. It would be rather a noticeable occurrence, yes. Mr. Tilton, when did this name for the paper of the 1st of January, 1871, of the Letter of Contrition first come to be given to it? A. I don't know, Sir.

Q. Was it not spoken of and described, so far as you know, up to the time of this trial, as an apology?

Mr. Beach—I submit, Sir, that that is wholly immaterial what it may have been spoken of abroad.

Judge Neilson—Do you mean spoken of between the parties?

Mr. Evarts—Yes, Sir; between the parties.

Mr. Beach—Between the parties, well that is not the question.

Judge Neilson—I cannot conceive it would be proper except in that view.

Mr. Evarts—People that hadn't anything to do with it, of course, I don't care what they called it. [To the witness]: Hadn't it been in any descriptions of it so far as you know occurring between Mr. Moulton and yourself or in which you gave publicity to any descriptions of it, spoken of as the apology until the time of this trial? A. Do I understand you now to refer to the manner in which it has been characterized by Mr. Beecher in talking with me?

Q. By you or Mr. Moulton in any description, public or private, that you have given of it, hasn't it been called an apology? A. Mr. Beecher always characterized it as my letter through Mr. Moulton—that was his word; there was never any characterization put upon it until I characterized it in the Bacon letter as an apology.

Q. As an apology. Then, up to the time of this trial, so far as any characterization by you was concerned, it had not been called an apology? A. No, Sir; I don't think that any characterization was given to it until—certainly not by me—until the narrative which I designed to publish in the Fall or Winter of 1872. I think there I characterized it as an apology.

Q. I don't ask anything about the contents of any paper. So far as you know, in any reference to it by descriptive titles, had it been called by you an apology up to the time of this trial? A. Well, it had been called in various ways; it depended on the person that I spoke to. I once or twice referred to Mr. Beecher—I once or twice spoke to Mr. Beecher on the subject, always speaking of it as *his* letter.

Q. Well, I don't ask you any conversation. I only—

Mr. Beach—Yes, you do.

Mr. Evarts—No, I don't ask for any conversation at all.

Mr. Beach—Well, I don't see how anybody can characterize it without conversing.

Mr. Evarts—I only ask for a single fact, whether he had described it, when he had given a descriptive title to it—not when he had spoken about it—by any other description than that of an apology.

Mr. Beach—Well, he was about to tell you?

Mr. Evarts—He was about to tell me the conversations that he had had concerning it, which I did not ask for.

Judge Neilson—This might be answered yes, or no.

The Witness—Well, Sir, I don't remember making any description of it whatever.

Mr. Evarts—What is the answer? A. I said I did not recollect ever having made any special description of it.

Q. Yes; except in the Bacon letter. There you called it an apology? A. Oh! yes, Sir; there it was characterized as an apology.

Q. Now, when and how did this descriptive name for it that has been used in this trial—of "The Letter of Contrition"—originate; did it originate with you? A. My impression is, Sir, that when a portion of the letter was printed, in what is called the Bacon letter, the newspaper press very generally characterized it as Mr. Beecher's letter of contrition.

Q. You think that name is taken from that public criticism upon it? A. That is my best recollection, Sir.



Q. Were you in your examination before the Committee asked this question, and did you make the answer that I read to it? [Reading:] "Did you, or did you not, as a matter of fact, accept the apology which Mr. Beecher made and forgive the offense? A. I accepted the apology and forgave the offense with as much largeness as I thought it was possible for a Christian man to assume." Were you asked that question, and did you make that answer? A. I think quite likely, Sir; I have no distinct recollection of it.

Q. Were you asked this question, and did you make this answer upon the same appearance before the Committee, and examination [reading]: "I ask you whether your relations and feelings towards Mr. Beecher, since January 1st, 1871, have not been friendly? A. Yes, Sir; my relations and feelings toward him since January, 1871, when he made the apology, down to the time when the church began to put out its right hand and take me by the throat, were friendly."

The Witness—Well, Sir, friendly in the sense that they were not hostile.

Q. Well, I ask you only whether you were asked that question and made that answer? A. Well, Sir, will you be kind enough to read a little further, and I think you will come to a modification of the statement.

Mr. Evarts—I will read the next question. I only want, however, your answer whether you made that?

Mr. Beach—Well, he says with a modification.

Mr. Evarts—No, he does not say a modification; he made it in the next one.

The Witness—Please read a little further, Mr. Evarts.

Mr. Evarts—I will. I will read the next, but that has not disposed of the present question. I ask you whether that question was asked you, and you made that answer? A. Well, Sir, all I can say about that is, that I don't remember either the question or the answer, except as I have read both question and answer in that report; that is all the aid I have to my memory on the subject.

Q. Well, I must take your answer, whatever it is. Was that question asked you and did you make that answer? A. Well, Sir, I say I don't know whether it was asked me, and I don't know whether I made that answer; the probability is something like that was asked me and that I answered something like that, only that I beg you to do me the favor to read a little further, for I think there is a modification of the answer.

Q. I told you that I would, but that does not dispose of the question whether that was asked and answered.

Mr. Beach—Well, he has disposed of it.

Mr. Evarts—I know. This is the next question; and I ask you whether this question was asked you, and whether you made the answer [reading]: "They are not now friendly, but they were friendly up to the beginning of the action of the church? A. Yes, Sir; that is to say, they were friendly in the sense that we were not in collision with each other."

The Witness—Yes, Sir; that is the only sense in which Mr. Beecher and I have been friends for the last four years.

Q. Now, these two questions and answers, you think, then, were asked and made? A. All I know about whether they were asked or answered is simply the record of them in that book,

that report; I have no recollection other than that record of it.

Mr. Evarts—Well, my only point is, to find out from you whether they were asked and answered.

Mr. Fullerton—Well, he has answered the question three or four different times.

Mr. Evarts—Yes; I won't criticise him, however; it is not my business to do that. What do you say? Were both these questions asked and both answered?

Mr. Fullerton—Now, he has asked the question three times.

Mr. Evarts—Now, which way has he answered it?

Mr. Fullerton—Well, I am not here to tell you.

Mr. Beach—He has answered it by saying that he has no recollection independent of the record in this book.

Mr. Evarts—I do not understand that. Will you read the answer that has been made, stenographer?

[Last answer of the witness read by THE TRIBUNE stenographer.]

Q. Now, upon that record and that recollection, will you say whether or not the questions were asked and the answers given? A. Cannot say, Sir. The chief questions which I recollect in regard to that Committee were the questions which were not asked me.

#### MR. BEECHER'S LETTERS ABOUT MRS. WOODHULL'S STORY.

Mr. Evarts—No matter; I don't ask you anything else; I am not asking for any new information—only, whether you did, or not, say a certain thing at a certain time. Just look at that letter, Mr. Tilton, and say in whose handwriting it is? [Letter handed to the witness.] A. It is in the handwriting of Mr. Beecher, Sir.

Q. Do you remember receiving that and conveying it to your wife? A. Yes, Sir.

Q. You received it from Mr. Beecher personally? A. No, Sir.

Q. From Mr. Moulton? A. Yes, Sir.

Q. There is no date on this; do you remember, in any connection, what time, what year, what part of a year it was? A. My recollection is, Sir, it was written about six months after the events to which it alludes; and the date was omitted in order—

Q. Well, no matter about it; I only want to get the fact.

The Witness—To make no inconsistency.

Q. You think it was written in the—? A. Spring of 1873.

Mr. Evarts [reading]:

MY DEAR MRS. TILTON: I hoped that you would be shielded from the knowledge of the great wrong that has been done to you, and through you to universal womanhood. I can hardly bear to speak of it, or allude to a matter than which nothing can be imagined more painful to a pure and womanly nature. I pray daily for you "that your faith fail not." You yourself know the way and the power of prayer. God has been your refuge in many sorrows before. He will now hide you in his pavilion until the storm be overpast. The rain that beats down the flower to the earth will pass at length, and the stem, bent, but not broken, will rise again and blossom as before.

Every pure woman on earth will feel that this wanton and unprovoked assault is aimed at you, but reaches to universal womanhood.

Meantime your dear children will love you with double ten-

derness, and Theodore, against whom these shafts are hurled, will hide you in his heart of hearts.

I am glad that this revelation from the pit has given him a sight of the danger that was before hidden by specious appearances and promises of usefulness.

Mr. Morris—It is a misprint here (*i. e.*, in a book which he held).

Mr. Evarts—"Specious," it is here—"by specious appearances and promises of usefulness. May God keep him in courage in the arduous struggle which he wages against adversity, and bring him out, though much tried, like gold seven times fined.

I have not spoken of myself. No word could express the sharpness and depth of my sorrow in your behalf, my dear and honored friend. God walks in the fire by the side of those He loves and, in heaven, neither you nor Theodore, nor I, shall regret the discipline, how hard soever it may seem now.

May He restrain and turn those poor creatures who have been given over to all this sorrowful harm to those who have deserved no such treatment at their hands.

I commend you to my mother's God, my dear friend! May His smile bring light in darkness, and His love be a perpetual Summer to you!

Very truly yours,

HENRY WARD BEECHER.

Q. The occurrence to which this refers is the publication of the Woodhull scandal, is it not? A. Yes, Sir; which had taken place several months previous.

Q. Well, which had taken place; we know when it took place. What it refers to is the Woodhull scandal? A. Yes, Sir.

Mr. Evarts—The publication of the Woodhull scandal.

[Letter marked "D, 103."]

#### WHAT MR. TILTON SAID TO MR. HALLIDAY.

Q. After the publication of the Woodhull scandal in November, 1872, did you have a conversation with Mr. Halliday on the subject of that scandal, or anything that should be said or done in consequence of it? A. I remember a conversation that I had with Mr. Halliday in company with Mr. Bell; I do not remember the date precisely.

Q. Very well; that is the time to which I refer. A. Yes.

Q. Where was that? A. At Mr. Halliday's house.

Q. And by previous appointment? A. That I have forgotten, Sir.

Q. Well, I don't know, I am sure. You were together there; you three persons were together there on this occasion? A. Yes, Sir.

Q. Was it by previous appointment or not? A. I have already answered you, Sir.

Q. Well, you mean that you don't know; is that your answer, that you don't know? A. I have already answered that I did not recollect.

Q. Very well; then so far as you remember about it, it was mere chance that you three were together, was it? A. I have already answered that, Sir.

Q. Well, do you answer it in that way, that it was mere chance that you came together, so far as you know? A. No, Sir.

Q. Well, what is the answer? A. I have told you that I did not recollect whether it was by previous appointment. I could

not say it was by mere chance unless I knew it was by mere chance.

Q. Well, so far as you have any recollection concerning the circumstances, it was a chance interview, was it? A. No, Sir.

Q. Well, how otherwise? A. I have no recollection whether it was a chance interview, or an interview by appointment. I have no recollection on the subject.

Q. Were you then in the habit of being at Mr. Halliday's? A. No, Sir.

Q. Can you say whether this was on the 18th of November? A. No, Sir.

Q. Or about that time? A. No, Sir.

Mr. Beach—What year?

Mr. Evarts—1872—very shortly after the publication. [To the witness.] What degree of acquaintance had you with Mr. Halliday prior to that interview? A. Very slight, Sir; I don't know that I had had any.

Q. Now, upon coming into Mr. Halliday's presence, or at the commencement of any discourse or conversation with him, did you say, "I want to see you?" A. I don't remember that, Sir.

Q. Do you remember how the conversation was introduced? A. No, Sir.

Q. Do you remember, at that stage of the matter, taking a seat? A. No, Sir.

Q. On the sofa? A. No, Sir.

Q. You don't remember whether you continued standing or sat down? Did you then say, "I came at the request of my friend, Frank Moulton, to speak with you concerning the Woodhull scandal?" A. I don't remember whether I did or not, Sir. The circumstances have passed out of my mind, so that I cannot answer positively.

Q. Do you remember, then, upon Mr. Bell's concluding some conversation he had with Mr. Halliday, and rising to leave, your saying to him, "George, don't go?" A. That I said "George?"

Q. "Don't go;" yes, to Mr. Bell. A. No, Sir; I never called him George in my life.

Q. Very well. A. I may have asked him not to go, but I did not address him that way.

Q. Well, you may have asked him not to go, but you do not think you addressed him by his first name? A. I don't think I did.

Q. Were you not well acquainted with Mr. Bell? A. I have known Mr. Bell from my boyhood, but not intimately; I don't think I ever should have ventured to speak to him with that degree of familiarity.

Q. Well, I don't care about that; but you knew him; he was not a stranger to you, as Mr. Halliday was? A. Not at all—a man whom I hold in very high respect.

Q. And you knew him quite well at that time. And then did Mr. Halliday, in answer to a look of Mr. Bell's to him, say: "Don't go; if Mr. Tilton wants you, stop?" A. I don't remember that, Sir.

Q. Did you then, in the presence of those two gentlemen, say this: "I have called to see Mr. Halliday at the request of my friend, Frank Moulton, to speak with him concerning the Woodhull scandal. I have come to deny it. It is as false as



can be. There is not a word of truth in it." Did you say that? A. I don't remember that I did, Sir; it is quite likely that I did, though; either that or the substance of it. Mr. Moulton and I pursued the same plan of denial.

Q. Now, don't qualify. I am asking you simply whether you said this or that thing. [To the Court.] I ask that anything be struck out, your Honor, that is not an answer to that.

Mr. Beach—Well, I don't know. What do you want struck out?

Mr. Evarts—Well, I ask his Honor to so rule.

Judge Neilson—The witness will confine himself to your questions.

Mr. Evarts—And what he has said in addition I ask to have struck out.

Judge Neilson—Yes, Sir.

Mr. Beach—That leaves it quite uncertain what is struck out.

Judge Neilson—That last remark.

Mr. Beach—Very well—about Mr. Moulton. That we have no objection to.

Q. Did you then say that the whole thing was a mere fabrication? A. I do not know that I used that phraseology, but I remember using some very energetic words, to blot out from their minds the idea that there was anything in that story. I do not think I used any such weak stuff as that. [Laughter.] I think I swept it away at a breath.

Q. This is less strong than you put it, is it? A. I trust so; yes, Sir.

Q. Did you disclaim all knowledge of its publication? A. I don't remember that; probably I did.

Q. Did you state that you were away campaigning when it made its appearance, and were perfectly astonished when it was printed? A. I don't remember that I said that.

Q. Did you, referring to that publication, also say, "It is just as false as it would be for me to go over to New-York and say that the tree in front of Mr. Halliday's house was covered with five hundred flags, representing all nations of the earth?" A. I don't remember that, Sir. I didn't know that he had a house in New York.

Q. I will read the question to you again? A. Thank you, Sir.

Q. Did you say, "It is just as false as it would be for me to go over to New-York and say that the tree in front of Mr. Halliday's house was covered with five hundred flags, representing all nations of the earth?" A. I don't remember any such expression as that.

Q. Is that weak, do you think? A. I should think it was rather weak; yes, Sir. I don't mean to say that it was not mine because it was weak.

Mr. Fullerton—Well, don't let us take a week to dispose of it. I am tired of this.

Q. Did you then, or did you during that conversation, and after the points as to which I have questioned you—did you say to Mr. Halliday and Mr. Bell, "My wife is as pure as light?" A. No, Sir. I will tell you what I said at that point. I wanted to say something more assuring than that to those gentlemen. I said, as I remember, something like this: "You won't regard my testimony as of any avail.

Go to Mr. Beecher and he himself will tell you that Elizabeth is as pure as gold, as pure as light," or some such expression as that.

Q. Well, that is the very next question I was going to ask you. Now, I want your answer to this one, whether you did not say, "my wife is as pure as light?" A. I don't remember whether I did or not; but if I did not then, I say it now.

Q. Yes; and did you not add, "You ask Mr. Beecher; he will tell you she is as pure as gold?" A. Well, something of that sort.

Q. Something of that sort? A. Yes.

#### THE WRITING OF THE TRUE STORY.

Q. Now, Mr. Tilton, I understand that somewhere along towards the end of December, 1872, there was in existence, or in course of preparation, a paper which has been here, I think, called or described as a "True Story?" A. Yes, Sir.

Q. Who wrote that paper? A. I wrote it.

Q. When did you write it? A. The latter end of December, 1872.

Q. Was it written out with all the documents which its frame included at that time? Was it in a complete form of composition, which included the documents that it embraced in its scheme? A. My impression is that one or two documents were not in; for instance, the tripartite covenant. I think that I had no copy of that. Mr. Claflin possessed that. My recollection is that the document was to be included.

Q. But with that exception you think it had been reduced to a complete form, so that an ordinary reader could take it up and follow it? A. My impression is that perhaps one or two other papers were not in.

Q. But otherwise it was in a shape that any one who could read writing could read it and understand it? A. Could understand all that was there.

Q. It was not phonographic or stenographic characters merely? A. No, Sir.

Q. It was in English? A. What is that, Sir?

Q. It was in English, and in our ordinary— A. As good English as I could write.

Q. Yes. Now when if at all was that document ever made complete by including what may have been the omitted document? A. I do not think, Sir, it was ever made complete by the inclusion of the tripartite covenant. That is my best recollection.

Q. Or any otherwise than as it then read? You have said you thought perhaps some other papers might have been omitted? A. Yes, Sir.

Q. Was it all written out in a more complete form than it then was? A. My recollection is that it was never in manuscript so complete as it ought to have been for publication, if it had been sent to press; that is to say, the tripartite covenant was never incorporated into it. Nevertheless, I am not positive as to that.

Q. But there was a place designated for that to come in, was there? A. Yes, that is my recollection.

Q. So that the bringing of that document and inserting it would have made the paper complete? A. There may, perhaps, have been two or three other breaks.

Q. Have you any recollection that there was? A. I will not speak positively, it is so long since I have seen the manuscript.

Q. Now, Sir, how bulky a paper was that? A. I think it would have occupied about two or three columns of a newspaper, printed.

Q. It was written on—what was it on—foolscap paper? A. I think it was; yes, Sir.

Q. And written on one side only? A. Yes, Sir.

Q. Now, about how many sheets of foolscap? A. I don't remember.

Q. How? A. I don't remember.

Q. Well, a good many? It would take a good many? A. Yes, Sir.

Q. I don't know so much about columns of a newspaper as an editor? A. I don't know how many sheets it was.

Q. It would take a pretty thick pamphlet, wouldn't it? A. Well, it would be as thick as your hand perhaps, rolled up.

Q. I mean of the foolscap; not more than that? A. I should think it was perhaps—well, a little thicker than that. [Referring to stenographer's note-book, about half an inch thick.] I don't know how thick it was. Sir.

Q. How many copies of that were ever made by you, or to your knowledge? A. No copy of it.

Q. No copy of it made? A. No, Sir; not by me or to my knowledge. I never saw any copy of it.

Q. Was that paper ever destroyed? A. To my best knowledge it was destroyed by Mrs. Tilton. She told me so. Whether that is—

Q. No matter about the communication from your wife? A. That is all I know about it.

Q. But so far as you believe, it was destroyed? A. Yes, Sir.

Q. But not by you personally? A. Not by me.

Q. Not by your design? A. No, Sir; she told me that she had destroyed it.

Q. Well, I don't care for any conversation between you and your wife. You believe it was destroyed, but not by you, and not by your design? A. I believe so; yes, Sir.

Q. Now, when did you last see that paper in existence, or know of its existence? A. A great while ago, Sir; I don't remember.

Q. How long, about, so far as your recollection goes, did it continue to be in existence to your knowledge? A. I don't know, Sir. I only know that last Spring, I think, Mrs. Tilton told me that she had destroyed it. When she destroyed it, I don't know.

Q. I don't ask for anything that comes from your wife to you? A. Yes, Sir.

Q. Then so far as you know of its existence—and my inquiry was solely how long you continued to see it, or to know of its existence otherwise? A. I don't remember that I ever saw it since the Spring of 1873; somewhere about that time.

Q. And you did see it to your recollection as late as that? A. I don't think I saw it very long after the time it was written. I

was put away in an iron safe. Perhaps I did; I don't remember.

Q. You don't remember how late? A. No, Sir.

Q. But some months at least it existed, did it not? A. I cannot answer as to that; I have no distinct recollection about it.

#### WHO HAD ACCESS TO THE TRUE STORY.

Q. Do you remember handing that paper to any person and leaving it for perusal? A. Yes, Sir.

Q. At the will of that person? A. Yes, Sir; several persons.

Q. Now, Sir, can you give us the names of those persons? A. I showed it to the Hon. William C. DeWitt, of this city, for one.

Q. And when? A. I don't remember when.

Q. Anybody else? A. I showed it to Mr. George A. Bell.

Q. When? A. I don't remember that.

Q. Now, in showing it to Mr. DeWitt, did you leave it in his possession? A. I did, Sir.

Q. And for how long did he retain it? A. A day or two, I think.

Q. And with Mr. Bell, how was it? Did you leave it in his possession, and how long did you leave it? A. I should think he had it a day or two; I don't remember how long.

Q. Now, to whom else did you show it? A. I think I showed it to Mr. Dunklee of this city; I don't remember his first name.

Q. Well, he is a well-known person, is he not? A. Yes, Sir.

Q. D-u-n-c-k-l-e-e? A. I don't know how he spells it.

Q. And did you leave it with him? A. I think I did, Sir.

Q. Give me any other person, if you please, that you remember. A. I don't remember them at present, but I showed it to a number of persons.

Q. And those are the only names you can give? A. Those are the only names that occur to me at present.

Q. Did you so show and so leave this "True Story," as it is called, with Mr. Goodrich—William W. Goodrich? A. No, Sir.

Q. You did not? A. No, Sir; I never showed it to him at all.

Q. Did you show it to or leave it with the Rev. Dr. Storrs? A. I read the original—

Q. Now, my question, if you please— A. No, Sir; not the completed manuscript.

Q. Did you show it to or leave it with him? A. No, Sir.

Q. As a whole? A. No, Sir.

Q. Now, you did read some part of it? A. The—

Q. No matter; I don't ask you what part. A. I didn't read any part of it to him.

#### SHARP WORDS BETWEEN THE LAWYERS.

Q. You did not show any part of it to him? A. No, Sir; not of that paper.

Judge Neilson—Let us get the answer.

The Witness—That answer is not correct.

Judge Neilson—I understand him to say that he read a portion of the draft.

Mr. Evarts—No.

The Witness—Well, Mr. Evarts I am under oath, and I desire that my answer may be correct.



Mr. Evarts—Of course.

The Witness—I didn't show that document to Dr. Storrs; that is to say, the document which you have now described. You have asked me about the pamphlet, how thick it was, &c.

Mr. Evarts—Exactly.

The Witness—And I say the sum and substance of it—

Mr. Evarts—Well, I am not now—

Judge Neilson—I think he has a right to answer that, otherwise it would be a misconception. That paper was, in a sense, the foundation of this.

Mr. Evarts—Now, if your Honor please, am I not permitted to inquire concerning a complete paper?

Judge Neilson—Yes, Sir.

Mr. Evarts—I mean the physical pamphlet, and nothing else; with whom he left it, and to whom he showed it. Now, if not leaving that with Mr. Storrs, and not showing him the whole of it, he had read a part of it or showed a part of it, that very pamphlet, to him, why that would have been a proper interrogatory.

Judge Neilson—Now, I understand the witness states he read a part of the draft to him.

Mr. Evarts—That is also a matter of subsequent inquiry.

Mr. Beach—Permit me to say, Mr. Evarts, that the question was not as to that specific paper, the pamphlet.

Mr. Evarts—Well, Sir, if I haven't it so, it is my mistake.

Mr. Beach—Allow me to make—

Mr. Evarts—Well, I want to say—

Mr. Beach—Do you persist in interrupting me when I address the Court?

Mr. Evarts—No, Sir.

Mr. Beach—I ask you to wait until I continue my remarks?

Mr. Evarts—Well, now, if you choose to continue.

Mr. Beach—I do choose to continue; but I desire you not to interrupt me in that way.

Mr. Evarts—I interrupted you to say that is my question.

Mr. Beach—I understand your question as well as you do. The question that was put to the witness was whether that paper which was called the "True Story," was read or shown to Dr. Storrs. The question was not whether the specific pamphlet which he had inquired about, was read or shown to him, as the stenographer's minutes will show. This draft was a part of the "True Story," was the preparation of the "True Story," and it necessarily called upon the witness for the explanation which he sought to give.

Judge Neilson—And the general denial could not well be reconciled with the fact that he had read a portion of the draft of that paper to Dr. Storrs.

Mr. Evarts—Now, if your Honor please, if the witness has supposed that at any stage of these questions concerning the persons to whom he had shown, or with whom they had left this paper, I referred to anything else except this completed manuscript, of which there was no other copy, then I will allow his answers to be corrected in any way that is proper.

Judge Neilson—We understand that now.

Mr. Evarts—But that I have a right to confine my question to that completed pamphlet and nothing else, I think cannot be denied.

Judge Neilson—Well, if that is avowed—

Mr. Evarts—Of course it is avowed.

Judge Neilson—And the witness is allowed to explain, then there is no misapprehension; otherwise there is room for criticism.

Mr. Evarts—I agree. So far, I say, if your Honor please, if there is the least doubt that the preceding questions and answers have been correctly understood by the witness, as applying to that completed pamphlet, as I have definitely reduced it to existence, why, I am willing any modification should be made which you please.

Mr. Beach—The stenographer will please read the last question.

THE TRIBUNE stenographer read as follows:

Did you show it to or leave it with the Rev. Dr. Storrs? A. I read the original—

Q. Now, my question, if you please? A. No, Sir, not the completed manuscript.

Q. Did you show it to or leave it with him? A. No, Sir.

Q. As a whole? A. No, Sir.

#### THE READERS OF THE TRUE STORY.

Mr. Evarts—Now we are right about it—that the completed manuscript, as I have reduced it to existence, and as you have answered about it, you did not exhibit to Dr. Storrs? A. No, Sir.

Q. And did not hand to him or read to him anything out of that paper? A. No, Sir; because I had already read the substance.

Mr. Evarts—No matter what your reasons were. We will have that struck out. You did not do it. Did you show that manuscript, completed as it was, to Charles Storrs, and if so, did you leave it with him? A. I think not, Sir.

Q. Did you show it to or leave it with, (and I now speak of the pamphlet itself—the written manuscript) to Mr. Puige, the artist? A. I do not remember whether I did or not; I think not, but still I will not be certain.

Q. Did you to Mr. B. F. Tracy—that very paper? A. Yes, Sir; I read him every word of that from beginning to end.

Q. Did you to Mr. Franklin Woodruff? A. Yes, Sir.

Q. Did you to Mr. Frank D. Moulton? A. I don't remember whether I ever read it to Mr. Moulton or not.

Q. Do you remember whether you ever left it in his hand? A. It was practically in his hands most of the time; it was under his control.

Q. Yes, Sir—you mean in his possession. That is what I mean by being in his hands. Did you leave it in his possession? A. It was in his control.

Mr. Beach—Oh, answer the question directly.

The Witness—My impression is that Mr. Moulton had it in his safe for a time; that is my best recollection.

Q. Very well; then it was in his possession. Did you show it to or leave it with Mr. James B. Mix? A. No, Sir.

Q. Do you know him? A. Very well.

Q. Is he a Brooklyn man? A. Yes, Sir.

Q. Did you show it to or leave it with Mr. F. B. Carpenter? A. My impression is I showed him the original draft—read him the original draft.

Q. I am not asking a question about the original draft; I am asking questions about the completed paper. A. I showed him either one or the other, I cannot say which.

Q. And you cannot say but that you did show him the completed paper? A. No, I cannot say which.

Q. Did you show it to or leave it with Mr. Samuel E. Belcher? A. I think not, Sir; I think I showed him—

Q. No matter what else you showed him—did you show him that? A. I think not, Sir.

Q. Did you show it to or leave it with Mr. John W. Harman? A. Yes, Sir.

Q. Both showed it to him and left it with him? A. Yes, Sir; I think I did.

Q. Did you show it to and leave it with Mr. James Redpath? A. No, Sir, I think not: I don't remember about it.

Q. You know Mr. Redpath? A. Perfectly well.

Q. And were in the habit of seeing him at that time? A. Mr. Redpath lives in Boston. He came over to my house and stayed there.

Q. Stayed at your house as a friend? A. Yes, Sir.

Q. Now, what do you say as to him? A. I have already answered.

Q. Have you no recollection of having showed it to him? A. I have already answered you, Sir.

Q. Well? A. If I had any recollection, Mr. Evarts, I should tell you cheerfully.

Q. I have no doubt of that. Do you recollect that you did not show it to him? A. I have already said that I had no recollection on the subject; how then can I recollect? I cannot.

Q. You have no recollection on the subject? A. No, Sir.

Q. Did you show it (this completed manuscript) to, or leave it with Mr. Thomas Kinsella? A. No, Sir.

Q. Neither showed it to him nor left it with him? A. No, Sir.

Q. Did you show it to Mr. William T. Clark, or leave it with him? A. I don't remember about that.

Q. Was Mr. Clark the assistant or editor of your paper? A. He was my associate editor; yes, Sir.

Q. He is the gentleman, I suppose, you refer to? A. My doubt as to Mr. Clark is, Mr. Evarts, whether he saw the completed copy or the original draft; I make the same answer concerning him that I did concerning Dr. Storrs.

Q. Now, I understand you to be clear that you never showed the complete paper to Dr. Storrs? A. I say I make the same answer to that concerning Mr. Clark; my recollection is that I showed him the original draft.

Q. I have not asked about anything else but the completed paper; you think you did not show Mr. Clark that—I do not know which way your answer is. Do you say whether you did, or did not, show Mr. Clark the completed paper? A. I don't know which it was—the one or the other.

Q. Did you show the paper to Mr. Whitney—Ald. Whitney I believe he is called? A. I think not, Sir; I showed him a copy of Mr. Beecher's letter of contrition.

Q. No matter about anything else; I am not inquiring about anything else. If your Honor please, I ask that his answer about anything else be stricken out.

Judge Neilson—That is proper.

The Witness—I think not.

Q. Do you remember offering it to him, rolled up, and his not taking it? A. No, Sir.

Q. You don't remember that occurrence. Now, Sir, the previous or earlier draft, if there was such a paper in any complete form (and you may describe how complete it was, if you please), did you show that to any of the persons that I have named? A. Well, Sir, I have already told you I showed it to Dr. Storrs.

Q. Now, we will see. What was this first draft?—how complete was it? A. It was just like the other; the other was a copy of it; the first draft was criss-crossed with interlineations of composition.

Q. Then, as I understand you, the matter of the first draft was the same as of the other paper? A. Yes, Sir, perhaps I ought to mention, Mr. Evarts, since you ask me as to the pamphlet completed, that very few persons ever saw the pamphlet with its final additions—namely, the two letters, one by Mrs. Tilton, and one by Mr. Beecher, written on almost the last day of the year.

Q. Which are in evidence here? A. Yes; these were written in afterwards; I do not think any one ever saw it with them.

Q. With these in it? A. Yes, Sir.

Mr. Evarts—Your Honor will remember that both of these letters are in evidence here. They are the two letters of Mrs. Tilton and Mr. Beecher, written in the end of December, 1872, which were proposed to be published, but were not published. Now if I can get the numbers of these exhibits, we can make this answer definite, if your Honor please, so that we can understand it.

[Mr. Shearman here handed Mr. Evarts "Exhibit D, 44."]

Q. [Showing paper to witness.] This is one of the letters to which you refer? A. Yes, Sir.

Mr. Evarts—"Exhibit D, 44;" this is Mrs. Tilton's letter. Now, I ask for the plaintiff's "Exhibit No. 74."

Mr. Fullerton—"No. 74" instead of "44"?

Mr. Evarts—No; I mean the other one.

Mr. Beach—[To Mr. Pearsall.] Hand him "Exhibit 74."

Mr. Pearsall—I have it here in the printed form.

Mr. Evarts—That will answer every purpose—to show it to him in print.

[Mr. Evarts then handed the witness the printed copy.]

The Witness—Now, what is the question, Sir?

Mr. Evarts—The question is whether that is the other letter? A. Yes, Sir.

Q. You have seen the original of the other. I understand you as now saying, as a part of, or applicable to all your answers in regard to what is called the complete statement, that probably at the time it was shown to either of the persons to whom it was shown, it did not contain these papers, "Exhibit D, 44" and "Exhibit 74"? A. No, Sir; you misunderstand me. The persons who saw the document before these two cards were written, of course could not have seen the cards copied in it. The persons who saw the document after these two cards were written, saw these cards copied in it.

Q. That is your explanation. Let us make this plain. Do



you remember when these two documents "Exhibit 74" and "Exhibit D, 44" were added or supplied to this "True Statement"? A. I think I copied them in as soon as I received them.

Q. As soon as they came into existence, about? A. That is my impression; yes, Sir.

Q. And that all persons to whom you showed the "True Story," in its complete form, after that date, saw it with these letters; and those to whom it was shown prior to that, saw it without them? A. Yes, Sir; very few persons saw it prior to that time, because it was not written until between Christmas and New Year's.

Q. You say, then, very few people saw it without those letters in? A. Yes, Sir.

Q. That is your idea; I thought it was the other way. Now, this original draft—did you show that or read it to Dr. Storrs? A. Yes, Sir; I read it to him.

Q. Read him the whole of it? A. Yes, Sir.

Q. And when did you do that? A. When did I do it?

Q. Yes. A. I did that, I should say, somewhere about the 20th of December.

Mr. Beach—Name the year.

The Witness—1872.

Mr. Evarts—1872; it is all 1872.

The Witness—I am not testifying as to the date exactly.

Q. About that time—about the 20th of December, 1872? A. Somewhere about that date; that is my best recollection.

Q. Now, did you show the draft, in the shape it was perfected, to Mr. Charles Storrs? A. I don't remember that I did, Sir.

Q. Did you show it to Mr. Paige, the artist? A. I do not remember that.

Q. Or to Mr. Dunklee? A. My impression is that Mr. Dunklee saw the complete pamphlet. Mr. Evarts calls it a "pamphlet." It was not a pamphlet; it was simply a roll of paper.

Mr. Beach—You had better not call it a pamphlet, because he does, improperly.

The Witness—He has misled me; it was a roll of paper.

Mr. Evarts—I understand that; there is no dispute what it was. It was written out and reduced to complete form, so that the documents appeared exactly that you have named. Did you show this draft to Mr. James B. Mix? A. I showed Mr. Mix some loose sheets—a portion.

Q. You did not show him the whole? A. No, Sir.

Q. Did you leave these loose sheets with him? A. No, Sir.

Q. Did you show this original draft to Mr. Samuel Belcher? A. That I do not remember.

Q. Did you leave it with him? A. I do not remember.

Q. Did you show that original draft to Mr. Redpath? A. I do not remember.

Q. Now, what became of this original draft? A. As soon as I copied it—made a clean copy of it—the original sheets, I think, went into my waste basket.

Q. So that is not in existence now? A. I think not, Sir.

Q. Do you know of any copy of that paper being now in existence? A. No, Sir.

Q. Now, I have understood you to say that you read the complete paper to Mr. Tracy? A. Yes, Sir.

Q. And you mean not the draft? A. The completed paper.

Q. Yes, the completed paper. Now, when and where was that? A. In Mr. Moulton's study.

Q. In an interview which has been made the subject of testimony here? A. Well, Sir, it seems to me something has been said about it; I think it was between Christmas and New Year's.

Q. Between Christmas and New Year's? A. Somewhere about that time.

Q. Now, Sir, when you say that this paper and this draft of it are destroyed, and you do not know of any copy of it in existence, I understand you that you mean that the whole of them are destroyed. A. There was no copy, Sir, that I know of; and this one being destroyed by Mrs. Tilton, I do not know of any other being in existence.

Q. All parts of it were destroyed? A. No, Sir; two or three of the final pages of it remain.

Q. Of what? A. Of this document.

Q. That includes these letters; doesn't it? A. I don't know exactly how much.

Q. Then you do understand that two or three pages remain; you say it is the last part? A. Two or three of the final pages which were written on, together with several blank sheets not written on, I found in my wife's bureau, after she deserted her home. I have those sheets still.

Judge Neilson—Mr. Fullerton announced that fact to us the other day.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—My object is to get at the facts; that is all I am after.

Q. And, excepting this, no part that you know of, either of the completed paper, or of the draft, or of any copy of them in existence?

The Witness [to Judge Neilson]—I do not know whether I should answer that yes or no.

Judge Neilson [to the Witness]—You can answer; he says so far as you know.

The Witness—Yes, Sir; the point is, I don't know whether my answer grammatically required "yes" or "no" to the question.

Judge Neilson—I think either will be right, Sir.

Mr. Evarts—Now, gentlemen, will you produce those parts that are preserved?

Mr. Fullerton—We cannot at this moment, because, I believe, they are not here.

Mr. Evarts—Well, that is a good answer for this time, of course.

Mr. Beach—A good answer for the day.

Mr. Evarts—Yes; for the day. I asked for them; my friend says they are not in Court, which is of course satisfactory.

Q. Mr. Tilton, let me recall your attention a moment to the date of any supposed interview in which you showed this complete statement to Mr. Tracy. Do you now say that it was between Christmas and New Year of 1872? A. I think it was, Sir; it was either then, or, possibly, a little later.

Q. Not earlier? A. Oh! no; it could not have been earlier, because the completed manuscript was not in existence earlier.

Q. Very well. Then, if you did show him something in this nature earlier than Christmas, it was not the completed paper? A. I didn't show him anything earlier than Christmas.

Q. Have you not in your previous examination put the date of this interview with Mr. Tracy earlier than between Christmas and New Year's? A. The interview which I had with Mr. Tracy, Mr. Woodruff and Mr. Moulton occurred in November, six weeks previous to this.

Q. At that time did you show him—I won't say the completed paper, because it was not then completed—but did you show him the draft of this statement, or read it to him? A. No, Sir; it was not in existence. The draft didn't come into existence until a month or so after. I didn't show anything to Mr. Tracy in that first interview. Mr. Moulton showed him the letter of contrition, and certain other papers.

Q. Now, at the interview at which you did show the contemplated paper, as you think—as you say, to Mr. Tracy, who were present? A. Mr. Francis D. Moulton.

Q. And nobody else? A. Nobody else; three of us in the study. Q. Where was that? A. Up in the study in Mr. Moulton's house.

Q. And that is distinct from the interview at which Mr. Woodruff was also present? A. Oh, yes, Sir, they were nearly two or three weeks apart—six weeks, or two months apart, those two interviews.

Q. Now, Sir, was not the interview at which you showed Mr. Tracy any paper or draft of the "True Story" about, or exactly the 15th of December? A. No, Sir, it was either two, three or four weeks after that.

Q. That is, it was either between Christmas and New Year's, or later? A. Or else later, yes, Sir.

Q. Now, can you give us the date of the destruction of the draft otherwise than that it was done as soon as you had completed the original? A. Oh! I think that as fast as I copied the sheets they went into the waste basket. That is all I recollect about it.

Q. You have no other recollection concerning it than that? A. No, Sir.

Q. And you cannot give us more exactly the day or the date on which you did make that copy of this paper? A. I should think that—I have a recollection that Mr. Carpenter has a note in his diary that it was finished on Christmas day.

Q. That the copying was finished? A. Yes, Sir.

Mr. Evarts—Well, that is not good evidence.

The Witness—No, not the copying.

Mr. Evarts—The copy?

The Witness—Yes, Sir, the copy.

Mr. Evarts—That is not good evidence.

The Witness—You asked me to fix the date. I may be wrong about it.

Mr. Evarts—As far as you can fix it, it was Christmas? A. Somewhere about that time.

Q. Now, how early did you begin the writing or drafting of the original? A. I should think somewhere about the 20th of December, perhaps.

DR. STORRS'S ADVICE ABOUT THE TRUE STORY.

Q. How are you able to fix that date, and with what assurance? A. I fix that date by the date of a visit which I made to Dr. Storrs, to which I carried Mrs. Tilton's letter of December 16th.

Q. Yes; well, you mean that the 20th of December was the date of the visit to Dr. Storrs? A. No, Sir, I think the date of that letter, namely, December 16th.

Q. Then, at the time of that visit you had not commenced the draft?

Judge Neilson—The copy.

The Witness—I think I had, perhaps, put together some notes of a draft, or I had possibly made some copies of the paper that I might read them to Dr. Storrs, that I might have his judgment, which I did get, and out of that judgment I wrote the paper.

Q. Well, no matter about that. I want to get at the date when you began to prepare what was physically the draft of this "True Story?" A. My recollection is about the middle of December—from the middle to the 20th.

Q. I mean this actual draft that you have spoken of as a paper in existence? A. Yes, Sir.

Q. When did you begin that? A. I think somewhere about the middle of December.

Q. That is all that I ask? A. That is my best recollection.

Q. And you then had an interview with Dr. Storrs, had you? A. I had two or three interviews.

Q. Well, you had one, then, on the 16th of December? A. Yes, Sir.

Q. And at that time you had not commenced the draft, had you? A. I don't remember whether I had commenced it, or not.

Q. You cannot say that you had any part of the draft with you when you went to Dr. Storrs? A. No, Sir; I don't recollect.

Q. Now, when next did you see Dr. Storrs? A. I don't remember the date.

Q. Be as clear as may be? A. I saw Dr. Storrs three or four times; I don't remember the dates of these interviews. One was in November, one was in the early part of December, and another was, perhaps, towards the middle or towards the close; I cannot recollect.

Q. My only point at present is to know what state this "True Story," in draft or completed copy, was when you showed it to Dr. Storrs? A. I read to Dr. Storrs the loose sheets of the substance of the whole paper; I don't remember on what day I did it.

Q. Did you read then from this physical paper that has been called the draft? A. Physical paper called the draft?

Q. Yes, Sir. A. Certainly; yes, Sir.

Q. You did? A. I read to him the paper which was afterwards copied in a more cleanly way—

Mr. Evarts—Well!

Mr. Fullerton—One moment.

The Witness—and which were stitched together and constitute what you call the pamphlet.

Q. Called the completed copy? A. Yes, Sir.

Q. Then this draft was the paper which you had when you



showed Dr. Storrs any part of it; that is, when you showed anything that was in the shape of a composition called the "True Story"? A. Well, Sir, I am not sure, but think I had two interviews with Dr. Storrs, one in reference to the documents themselves, before they were joined together in a draft.

Q. That might be, but that I am not inquiring about. A. What is it you are asking me about, Mr. Evarts?

Q. I want you to fix the date of the interview with Dr. Storrs in which you had physically present the draft, or any part of the draft of the "True Story" A. Well, Sir, I cannot fix the date.

Q. You cannot? A. No, Sir.

Q. But it was subsequent to the 16th of December? A. To the best of my recollection.

### THE STORIES THAT CAUSED THE BOWEN LETTERS.

Q. I come now to the period of the meditated publication of your letter to Mr. Bowen of the 1st of January, 1871. You had returned from the West, as I understand? A. Yes, Sir.

Q. And found a condition of rumor and implication here that made you think it was necessary to have some publication? A. Yes, Sir.

Q. You had been on a lecturing tour, had you not? A. Yes, Sir.

Q. That was the season of 1871-'2? A. Yes, Sir.

Q. Did Mrs. Tilton accompany you on that tour? A. She did, on a part of it.

Q. How many months or weeks? A. I don't remember that We went away off into the North-West, I think.

Q. The greater part of the tour? A. I think not; a portion of it.

Q. Now, as you traversed this region for the purposes of your lecture, as I understand, you found prevalent there stories which I think you have characterized as horrible stories to your prejudice? A. No, Sir, I didn't.

Q. I thought you had? A. No, Sir, no such characterization.

Q. Well, what was it? A. I will tell you what I found in the West. I found this, a good deal of mystery growing out of the fact that at the close of December, 1870, *The Independent* had in a eulogistic way announced that I was to be editor of *The Brooklyn Union*, and to contribute to that paper, and that then very suddenly the newspaper press of the country announced that my relationship with those two papers had been sundered, and people wanted to know the reason why; every one said I must make an explanation.

Mr. Evarts [reading from THE TRIBUNE report]:

Mr. Fullerton—Never mind that. Did you regard these stories which were afloat in the West, and which you heard of West, when on your lecturing tour, as detrimental and prejudicial to your character? A. Why, Sir, they were horrible stories.

A. I thought you were referring to the interview I had with Mr. Bowen, Dec. 26th, in which I quoted his word "Avalanche."

Mr. Evarts—Oh! no, I am referring to this very period.

Judge Neilson—This relates to stories which he heard while he was on his lecturing tour.

Mr. Evarts—While he was out West.

Judge Neilson—And not after his return.

Mr. Evarts—Of course that is what I am asking him. I understood the witness, on his direct examination, to say that on his return from the West he thought it necessary that some publication should be made to meet a state of things that was then in existence.

The Witness—Yes, Sir; the mystery was why I should be so suddenly retired, and many people were filling the gap with all sorts of explanations, stories and the like.

Q. I understood you said that on your direct examination, and I am now recalling your attention to that period. Now, what was the nature and character of these horrible stories that you heard out West? A. Well, I heard one story to the effect that I had become a drunkard; I heard another story to the effect that I had been divorced; I heard another story to the effect that I had embezzled money—I don't know what the stories were.

Q. Well, these stories were discreditable, of course, in their nature? A. Yes, Sir; they were.

Q. And on your return you brought up the matter of publishing this Bowen letter? A. Yes, Sir; to explain the true reasons why I went out of those two papers.

Q. When was this return, and when was it, as matter of fact—no point of date—that you commenced preparing and indicating a purpose of publishing that letter? A. I think it was the month of March, 1872.

Mr. Beach—[To THE TRIBUNE stenographer.] Please read the question.

[THE TRIBUNE stenographer read the question.]

Mr. Evarts—If the question is incorrect I will correct it.

Mr. Beach—I think it is.

Mr. Evarts—Preparing for or indicating a purpose of publishing that letter. [To the witness.] Now, with whom did you confer, if with any one, concerning the preparation of any statement to accompany the publication of that letter? A. I conferred with Mr. Oliver Johnson, to the best of my recollection, and with Mr. Moulton. I don't know that I conferred with any one else; if so, I have forgotten at the present moment.

Q. Well, how early was the new matter that was to accompany the republication of the letter itself completed and put in type? A. I don't understand that.

Q. How early was the new matter that was to accompany the reproduction of the Bowen letter itself prepared and put in type? A. You mean the exact date?

Q. Yes, Sir, as near as I can get it. A. I don't remember.

Q. I want to know. Was it before the end of March? A. I don't remember that; I should think somewhere towards the end of March.

Q. Somewhere towards the end of March? A. I should think so, Sir. I have no means of fixing the exact date.

Q. But that is your best recollection? A. Well, Sir, I have no recollection other than that which attaches to the date of the signing of the tripartite covenant, which was April, 1872.

Q. Exactly? A. The preparation of the article was shortly before that, and that is what fixes it.

Q. And it was put in type shortly before that, was it not? A. Yes, Sir.

Q. Now, to whom, when this was put in type, was it shown? A. Mr. Moulton showed it; I don't remember that it was shown to anybody other than the persons concerned in its preparation—Mr. Johnson and Mr. Moulton; Mr. Moulton, I think, showed it to Mr. Beecher.

Q. I believe that has been spoken to? A. Yes, Sir.

Q. To whom did you show it? A. I don't think I showed it to anybody: I don't remember that I did.

Q. Was it not shown to Mr. Bowen? A. Mr. Claflin showed it to Mr. Bowen, I think.

Q. You know that Mr. Bowen saw it? A. I don't know it in the sense that a man can testify under oath. I was told Mr. Claflin took it to Mr. Bowen; I was not present.

#### THE CHANGES IN THE TRIPARTITE COVENANT.

Q. And that was before the tripartite agreement was signed? A. Yes, Sir.

Q. The tripartite agreement is in evidence, and it was dated the 2d day of April, do you remember? A. Yes, Sir, that is the date of it.

Q. Now, before the tripartite agreement was reduced to its actual form in which it is signed, and brought in evidence here, had there been a previous preparation of any clause in it in which you were concerned? A. Yes, Sir; there was a previous preparation of that paper by Mr. Wilkeson, containing a clause which I declined to sign.

Mr. Evarts [to Mr. Shearman]—Have you got that paper, the tripartite agreement?

Mr. Shearman—Yes, Sir. [Handing paper to Mr. Evarts.]

Mr. Evarts [handing paper to Witness]—Take that, if you please. Now, before that was signed, as it now reads, there was a draft or proposed agreement for signature that differed from that? A. Yes, Sir; differed very greatly from this.

Q. Now, have you a copy of that as proposed? A. Only such a copy as exists in the printed books.

Q. You have not the paper itself, have you? A. No, Sir.

Q. In which clause, if it was confined to one clause of that agreement, was this difference—in which clause was this difference of the preparation? A. If you show me the book I will point it out to you.

Judge Neilson—He means which clause in that before you. Is it numbered?

Mr. Evarts—Yes, Sir.

The Witness—This is the completed draft, your Honor; he is speaking of the original draft.

Mr. Evarts—My question is, in which of the clauses, as they now appear in the completed paper, was the difference between the paper and the draft—in which of those clauses? A. Changes were made in two clauses.

Q. Then give us both? A. In Bowen's clause and in my clause.

Q. They are numbered there, are they not? A. Yes, Sir; Mr.

Bowen's is No. 1, and mine is No. 2. Changes were made in both before Mr. Bowen signed, and before I signed.

Q. The difference between those papers as actually signed, and the draft as considered before, was in the first and second clauses? A. Yes, Sir.

Q. Was there any difference in the third clause, or Mr. Beecher's clause, that is, I suppose? A. All I know about it is what I see in this book, and I am just reminding myself that I have testified to what I don't know really of my own knowledge, only as I see it here.

Q. Well, you have a right to refresh your recollection from anything in which you have reasonable confidence. You have that book before you, have you, in which that statement is? A. Yes, Sir.

Q. Now, with that advantage, or without that advantage, you recollect that there was a difference between the draft and this paper? A. Yes, Sir.

Q. And in the clause that was to be signed by you? A. Yes, Sir.

Q. As well as in that which was to be signed by Mr. Bowen? A. Yes, Sir.

Q. Now, do you know of any preservation of the original draft? A. No, Sir.

Q. Do you know whether the original paper itself is in existence, or not? A. I do not; all I know is what I see here in this book, which purports to be a copy of the original draft.

Mr. Evarts—I believe it is in existence, and, if your Honor please, we would wish to go on with that. It is in our possession if it is in anybody's. If it is insisted upon, we can have that here to-morrow morning, if your Honor please. The material point that the paper itself should be here is to proceed with the inquiry.

Judge Neilson—[To the Jury.] Gentlemen, please be in your places at eleven o'clock to-morrow.

Mr. Mallison (Clerk)—The Court stands adjourned until to-morrow morning at eleven o'clock.

The Court thereupon adjourned until eleven o'clock on Thursday.

#### TWENTY-FOURTH DAY'S PROCEEDINGS.

#### MISSING FRAGMENTS OF THE "TRUE STORY."

THE TRIPARTITE COVENANT AND THE BOWEN ARBITRATION—PART OF THE "TRUE STORY" PRODUCED BY MR. TILTON—THE REMAINDER, SUPPOSED TO BE DESTROYED, BROUGHT IN BY THE DEFENSE—THE CROSS-EXAMINATION OF MR. TILTON ALMOST COMPLETED.

THURSDAY, Feb. 11, 1875.

The tripartite covenant may be an important weapon in the hands of the defense. The direction in which Mr. Beecher's counselors expect to wield it was more than faintly foreshadowed during the two hours that it was the object of Mr. Evarts's questions to the plaintiff to-day. As Mr. Moulton



has sworn, the tripartite covenant was completed by the affixing of the signatures on April 2, 1871, while the arbitrators in the case of Mr. Tilton against Mr. Bowen made their award earlier on the same day. The defense may try to show that the two transactions hinged upon each other; to that end Mr. Evarts's inquiries yesterday tended. His questions, put seemingly with little thought as to their consecutive order, were in regard both to the tripartite covenant and to the Bowen arbitration, and so skillfully did the examiner "dove-tail" his queries about the two subjects that they seemed to become inseparable events. The meeting at Mr. Moulton's house in regard to the covenant was first described by the witness, who said that he, then and there, expressed his willingness to sign the agreement "twenty times over," if Mr. Bowen would sign, but when he more fully comprehended the clause touching himself, he declined to put his name to it, and that brought about the change. The next questions were as to whether Mr. Tilton received the check for \$7,000 from Mr. Bowen before or after he signed the paper. The witness said it was before. There was a very minute examination of the manner in which the covenant was composed and signed, and the witness gave, as the best of his belief, that Mr. Bowen signed it first; himself second; Mr. Beecher last. The well-known Bowen letter, which formed a part of the tripartite agreement, and was published in a Brooklyn Sunday newspaper some time afterward, was closely traced from the day on which it was printed on "slips" in *The Golden Age* office. Mr. Tilton said that he knew nothing of the manner in which the Sunday newspaper obtained a copy of the letter, although he had thought, because Mr. Kinsella had said that Mr. Beecher had shown him the tripartite covenant, that it was through Mr. Kinsella that the letter had found its way into print.

Mr. Evarts now called for the portion of the so-called "True Story" in the possession of the prosecution, but it was found that Mr. Tilton had it at home. He promised to produce it after recess, and Mr. Evarts proceeded to other subjects to fill the remaining few minutes of the morning session. The questioning then brought replies that from 1866 to 1870, inclusive, the witness attended Plymouth Church eight or ten times a year; that he never except once remained at Mrs. Woodhull's house until midnight; and also that he had no access to the papers in Mr. Moulton's hands after the appearance of the Bacon letter.

## A DOCUMENT THAT SEEMS TO BE A SURPRISE.

The most interesting occurrence of the week was the production of a copy of the so-called "True Story," written by Mr. Tilton in the latter part of 1872, subsequent to the publication of Mrs. Woodhull's story. After recess Mr. Tilton took from his pocket the pages of the statement which Mrs. Tilton left in a bureau drawer after she left his house last Summer. They are ordinary foolscap sheets, unnumbered, and written very carelessly. The edges of one side, which had been stitched together, are much mutilated. They constitute the concluding pages of the "Story," and were supposed by Mr. Tilton to have been destroyed by Mrs. Tilton. Mr. Evarts took the pages from the witness and all of Mr. Beecher's lawyers examined them carefully, after which they consulted together for a few moments. Then Mr. Evarts arose, and from a bulky book which he held in his arms, he read this sentence: "One day last month when I was in Northern New-Hampshire, a scandalous publication burst like a cloud over my home in Brooklyn, and shed a sudden shadow on my wife's good name."

He then asked Mr. Tilton whether that was the way in which the "True Story" began. From this question and from those following, it was evident to the counsel for the plaintiff that the defense were in possession of a copy at least, of the "True Story." It was not until after several questions had been answered by Mr. Tilton (who did not remember the phraseology but admitted that such statements were contained in the "True Story") that his counsel ventured to offer a protest. Then Judge Fullerton, and afterward Mr. Beach, insisted that the defendant was giving secondary evidence of an instrument, the loss of which had not been proved. Judge Neilson ruled that Mr. Evarts was in order, and the latter declined to give his opponents any clew regarding the document from which he was reading. There was a great deal of speculation as to the manner in which the counsel for the defense had obtained the copy.

The "True Story" comprises charges against Mr. Beecher, Mrs. Beecher, Mr. Bowen, and Mrs. Morse, the writer being very vehement against the two men, while he accuses Mrs. Morse of making malicious and cunning statements against her family, and Mrs. Beecher of being his enemy for years, and of having attempted to injure him. The charge against Mr. Beecher is that he had asked Mrs. Tilton

"to be a wife to him together with all that this implies."

After the reading of each sentence Mr. Tilton was asked whether that clause was included in the "Story." The phraseology seemed dim in his memory, but he generally testified to the correctness of the substance of the sentences. In one place where the action of his retirement from *The Independent* is discussed, occurs the sentence: "I took off my crown and laid it at his (Bowen's) feet." "Is that yours?" asked Mr. Evarts. "It sounds just like me," replied the witness, with the shadow of a smile on his face; "I think I must have said it." Mr. Evarts laughed, and was joined by the audience. It was nearly 4 o'clock when the subject of the "True Story" was exhausted.

### THE PROCEEDINGS—VERBATIM.

#### MR. TILTON CANNOT INDICATE THE CHANGES IN THE COVENANT.

The Court met at 11 a. m., pursuant to adjournment. Theodore Tilton was recalled and his cross-examination resumed.

Mr. Evarts—We were speaking, Mr. Tilton, of the transaction of the tripartite agreement, and of the previous draft differing from the actual paper, you remember? A. Yes, Sir.

Q. You have no copy of that draft, as you have stated, I believe? A. Not unless the printed book is a copy.

Q. Yes, unless the printed book is a copy. Now, I ask you to look—that purports to be a copy—in this printed book, and see if you recognize that as the draft that was replaced by the actual paper? [Handing witness the book] A. I cannot say whether this was the original draft or not. It purports to be.

Q. Look at it and peruse it, if you please, and say whether that now seems to you to be the draft? A. All I can say is, Sir, that it purports to be; I cannot say that it is not, nor that it is.

Q. Well, have you no recollection concerning the draft, the paper which was altered, and altered by your request, or altered in consequence of some suggestion of yours—can't you, from any recollection placing you back in the transaction, say whether or not that is a faithful copy, so far as substance and any sense of the thing is concerned? A. I recollect very distinctly, Sir, that there was a draft presented to me which, when I carefully read it over, I declined to sign; and that I made alterations or amendments in that draft, perhaps re-wrote a part of it; and that the paper that I signed was not the first one, without the alterations, but the second one, in which my alterations had been made.

Q. That we understand. A. Now, whether this is a copy of that first draft as it originally came from Mr. Wilkeson's hand, I have no other knowledge than the mere fact that this book says so.

Q. Well, won't you read the article that relates to yourself,

not aloud, but read it, and see whether that article is in your recollection—to the best of your belief, the article relating to yourself in the draft? A. I could not swear, Mr. Evarts, that this was the identical phraseology which Mr. Wilkeson first submitted to me.

Q. On perusing that article to which I have last called your attention, does anything occur to your memory as having been in that article in the draft—that is, not there now—that is, not in the print before you? A. No especial phraseology or sentence.

Q. In so reading what is now before you in that article, does it occur to your memory that there is anything omitted in the print before you that was in that article in the draft? A. No, Sir.

Q. Then, so far as you know and believe, that article, as in print before you, is in substance and meaning as it was in the draft? A. Well, I could not say that, Mr. Evarts.

#### MR. WILKESON'S DRAFT OF THE COVENANT.

Q. Well, you remember nothing wanting, and you remember nothing additional in the draft? A. I don't remember the phraseology of that original draft distinctly enough to compare it in my recollection with this printed form. I cannot swear that this was that draft or not. I won't swear that this is not.

Mr. Evarts—We will have this identified in some way.

Mr. Fullerton—What page is it on?

Mr. Evarts—It is blank.

Mr. Morris—It is in Mr. Wilkeson's statement.

Mr. Evarts—Yes, it is not necessary to have any further identification.

Mr. Morris—No.

Mr. Evarts—That it is the supposed draft that is contained in this book.

Mr. Fullerton—It is in Wilkeson's statement.

Q. Now, in whose handwriting was the draft as it was before you while the transaction was going on? A. I have an impression that it was in Mr. Wilkeson's handwriting, but I am not very positive as to that. I notice that the tripartite covenant in its final shape as signed by the three of us, and which you put into my hand yesterday, was in Mr. Wilkeson's hand.

Q. And your recollection is that the draft was in his handwriting? A. No, Sir; I didn't say that.

Q. Well, state it yourself again, if you please? A. That is my impression, but I am not positive that the original draft was also in his hand.

Q. Mr. Samuel Wilkeson? A. Mr. Samuel W. Wilkeson, I think. I don't remember whether there is a middle name or not.

Q. Well, it is Mr. Samuel Wilkeson? A. Yes, Sir.

Q. Now, who were present when this draft was thus shown to you as you have stated? A. You mean the original draft, or the final one?

Q. The original draft? A. I don't know whether it was shown to me at all. I think it was read, and I think the occurrence took place in Mr. Moulton's study. The scene as it rises to my



mind now seems to include Mr. Claflin, Mr. Wilkeson, Mr. Moulton and myself. That is my best recollection at present.

Q. And was it a pre-arranged meeting? A. That I don't remember, Sir.

Q. You cannot say but it was casual? A. I don't remember any previous appointment; I think Mr.— I don't know; I couldn't answer.

Q. Do you think it was a chance gathering of these four people? A. I should not think it was a chance gathering.

Q. What hour of the day was it? A. This meeting at Mr. Moulton's?

Q. Yes. A. That I don't remember.

Q. Do you remember whether it was day or evening—morning or evening, or what not? A. I cannot speak positively as to that. I have a kind of impression that it was evening; still—

Q. Still it might have been the morning? A. Well, I would not want to swear positively to that which is so indistinct in my mind.

Q. Well, either way—either way it is indistinct; whether it was morning or evening is indistinct? A. Yes, Sir.

Q. Now, was the paper as thus before you, read to you, or shown to you, proposed for your then present signature? A. I don't remember that, Sir.

#### THE PROPOSAL OF THE TRIPARTITE COVENANT.

Q. Did you, on reading or hearing read that draft on that occasion, express your readiness to sign it, and offer to do it immediately? A. My recollection about the circumstance is this: that Mr. Claflin asked me, either on that day or perhaps a preceding day, whether or not, in case Mr. Bowen could be induced to withdraw the statements which he had made against Mr. Beecher, and would withdraw them in writing—whether or not I would bind myself in writing not to make any use or circulation of Mr. Bowen's statements, and I answered with great readiness I would. My further recollection is that the original draft was brought to this occasion—to the interview of which I am speaking—with a view to accomplish that end. My still further recollection is that the draft was read, and when the paragraph assigned to Mr. Bowen had been read I burst out with the expression, "Mr. Bowen will never sign that." Mr. Claflin said something like this: "Mr. Bowen has got to sign it." I don't remember very distinctly about the concluding part of the covenant. I recollect this, however, saying that if Mr. Bowen would sign that I would sign it twenty times over; in other words, that if Mr. Bowen would blot out so sweepingly—

Mr. Evarts—No matter.

Mr. Beach—Yes, he is stating.

The Witness [continuing]—As that paper, I would sign it.

Mr. Evarts—He is giving—

Mr. Beach—He is giving the substance of what he said.

The Witness—I told Mr. Claflin very distinctly that I didn't think Mr. Bowen would sign it. Mr. Claflin said Mr. Bowen would have to sign it. I said, "If Mr. Bowen will blot out his own words in that way I will sign any such paper a dozen times over." But the discussion of the paper was had in reference to the clause concerning Mr. Bowen. Afterwards, when it came to

what was written for me to sign, I declined to sign my paragraph.

Mr. Evarts—Well, that is after. I think that this may be struck out.

Judge Neilson—I think it is proper.

Mr. Evarts—I have not asked him any question as to what transpired after.

Judge Neilson—It relates to the general inquiry.

Mr. Evarts—Will your Honor allow the question to be read?

Judge Neilson—You have been taking his general recollection of what was said.

Mr. Evarts—Your Honor will see by the reading of the question what my inquiry was. Will the stenographer read the question?

THE TRIBUNE stenographer read the question as follows: "Did you, on reading or hearing read that draft on that occasion, express your readiness to sign it, and offer to do it immediately?"

Judge Neilson—I think that calls generally for all that was said on the occasion, as bearing on that. It is a very comprehensive question, unlike most of your inquiries.

Mr. Evarts—It strikes me, on the other hand—if your Honor will allow me to state—that it was emphatically a question, on the cross-examination, that admits of an answer, yes or no, and requires nothing more.

Mr. Beach—He was asked, if your Honor please—

Mr. Evarts—Well, I don't propose—

Mr. Beach—Wait a moment.

Mr. Evarts—I don't propose to discuss it any further.

Mr. Beach—Well, I do. He was asked whether he offered to sign it. He goes on to state what he has stated in reference to the clause concerning Mr. Bowen, and was then proceeding to say that when the clause relating to himself was read he found fault with it and refused to sign it in that shape, and just at that point the counsel interrupted the witness.

Judge Neilson—Your theory is that if the counsel wants his question answered yes or no, he should have intervened at once.

Mr. Beach—Yes, Sir.

Judge Neilson—Instead of allowing him to proceed with a general explanation?

Mr. Beach—Yes, Sir.

Judge Neilson—I think we will let it stand as it is.

Mr. Evarts—Oh, well, I don't object, only I didn't want it to go on continuously, as if it were an answer to my question.

#### WRANGLES OVER THE LEGALITY OF ANSWERS.

Mr. Evarts—Oh, well, if your Honor please, I don't object to that, only I do not want to let him go on continuously as if in answer to my question. [To the witness.] Now, did you then and there, after this statement that you were ready to sign it a dozen times, or twenty times, whichever it was, did you then and there offer and propose, by movement or words, to actually sign the paper at that moment? A. I remember, Sir, as a gesture expressive of my willingness to sign such a paper, I took up a pen and made a motion like this—"I will sign it twenty times over."

Mr. Evarts—Yes, Sir.

The Witness—But when I come to look closely at the paragraph, Sir, and saw—

Mr. Evarts—That is an answer.

Mr. Beach—No, Sir; it is not. The question is whether he offered to sign it, or made any gesture—

Judge Neilson—Suppose he qualified that; I think we ought to take the whole statement.

Mr. Evarts—Now, if your Honor please, how can I conduct a cross-examination if it is in the power of this witness—and I do not speak of him differently from any other witness—if it is in the power of this witness to interpose explanations that are not a part of the answer to my question. He has abundant opportunity, your Honor knows—

Judge Neilson—He ought to confine himself to your question, of course.

Mr. Evarts—He has abundant opportunity to explain on re-direct examination, or a subsequent explanation may be given.

Judge Neilson—Well, I think when a statement is taken in part it ought to be taken entire.

Mr. Evarts—Well, that would expose one very much to the mercy of the witness.

Mr. Beach—I insist, Sir, that in the answer to that question whether he then offered to sign that paper, that the witness having said that, when the article relating to Mr. Bowen was read, he took up his pen and manifested his readiness both by gesture and declarations to sign, that he should be permitted to conclude the balance of the answer which he has undertaken to give; that when he saw or heard read the paragraph relating to himself, he then refused to sign that paper.

Judge Neilson—Without modification.

Mr. Evarts—I do not so understand that he has said anything of that kind; nothing of the kind.

Mr. Beach—Well, we will see whether he has.

Mr. Evarts—[To the witness.] Had not the whole paper been read to you when you offered to sign—

Mr. Beach—Wait one moment; I object to the question; do not answer the question. I submit that, before this counsel shall be permitted to put another question, the witness shall be permitted to answer the question he has undertaken to answer and partly answered.

Judge Neilson—I think so. The inquiry was whether this gentleman was not ready and willing and did not offer to sign. He proceeds to state, illustrating his answer by the flourish he made at the time. I think he should be allowed to add, if he saw occasion to change his mind—allowed to add that.

Mr. Evarts—That is a subsequent matter. I want the fact as it occurred; and it is that he was then and there ready to sign, and took a pen for the purpose.

The Witness—I was ready to sign exactly what I stated, whether the other two—

Mr. Evarts—Well, now, I have not asked him as to what his readiness to sign was.

Judge Neilson—I think what he was proceeding to answer was called for by your question.

Mr. Evarts—I asked him what he then and there did.

Judge Neilson—Yes.

Mr. Evarts—I asked for gesture or word.

Judge Neilson—Yes; he gave it.

Mr. Evarts—Well, then, there is an end of it.

Mr. Beach—No; it is not.

Mr. Evarts—How has he a right to go into what he was thinking about.

Mr. Beach—Nobody asked that.

Judge Neilson—But he has a right to this: if you fix him to the point that he was ready and willing and by a flourish of the pen he did offer to sign it, as he states, a dozen times, that would fix him to the fact that he had bound himself to sign it, or had promised to do so, and recognized it as correct; and, therefore, the witness ought to be allowed to say whether, upon further noticing the paper, he saw objection.

Mr. Evarts—That he would be allowed to say on the re-direct examination, perhaps.

Judge Neilson—It would be an awkward thing to stand, I think, on the cross-examination.

Mr. Beach—It would not be a true answer to the question which he was undertaking to answer.

Mr. Evarts—Now, if your Honor please, I have asked him, and given him the full liberty of the word and gesture then exhibited, and now I take the word and gesture in full; I won't cut out anything of that, but as for interposition of what he and why, in his own mind, he was ready to do, I must insist it is no part of my examination.

Judge Neilson—If he saw, then and there, occasion to qualify the expression of readiness to sign, he should be allowed to state it.

Mr. Evarts—If he did there; but that is not the point of what he is going on to say. I will take all that occurred from this witness at that interview.

Judge Neilson—At that interview; that is all.

Mr. Evarts—Very well; but I will take it, with your Honor's permission, in my own inquiries.

Mr. Fullerton—Well, you will take it in his answers also.

Mr. Beach—If your Honor will recur to the stenographer's minutes, you will get the precise phrase of the witness at the moment he was interrupted. He gave the gesture of his readiness to sign, and then went on with a "but," to say: "When I saw the paragraph relating to myself;" and there the counsel interrupted him.

Judge Neilson—I think he has a right to state that. Otherwise, he stands as a person who agreed or consented to sign. Whatever he said and did at that interview, he has a right to say.

Judge Neilson—Did you, at that interview, see the paper; did you inspect it? A. I don't think, Sir, that I saw the paper at all.

Judge Neilson—Well, now that disposes of it.

Mr. Evarts—If your Honor please—

Judge Neilson—I am adopting your theory, now.

The Witness—Your Honor understood me, of course. I saw the paper in the hands of the gentlemen there, but I don't think I had it in my own hands at all.

Judge Neilson—You did not examine it to see what it contained? A. No, Sir.



Judge Neilson—Now, I adopt your theory.

Mr. Beach—But it was read to him on that occasion.

Judge Neilson—Was it read at that time.

The Witness—I don't remember distinctly whether the concluding paragraphs were read or not.

Mr. Evarts—Now, we will go on.

Judge Neilson—Yes, we will go on, please. [Laughter.]

Mr. Evarts—Now, Mr. Tilton, before you made this gesture and this statement of readiness to sign, had you read or heard read the whole paper? A. I don't remember, Sir, whether the remaining portion was read or not; I know that—I remember by the impression which the reading made upon my mind, namely this, that when the long and effusive and glowing paragraph was put into Mr. Bowen's mouth, of retraction of all that he had said, I burst in, saying, "If Bowen will sign that, I will sign it twenty times over;" something of that sort. It was that part of the document brought to my attention; whether the remaining portion of it was then read or not, I don't know. I know this, however, that as soon as that document with its remaining portions was before me for my signature and I read it carefully, that I utterly repudiated it.

Mr. Evarts—Well, we won't take that answer. It is to come yet from further questions if it comes at all.

Mr. Fullerton—It comes now.

Mr. Evarts—I submit to your Honor that it is not within the rule.

Judge Neilson—We will let it stand.

Mr. Evarts—I ask to have it struck out, if your Honor please; it is not the statement of anything that he said or did in answer to any question.

Judge Neilson—I think it is proper, as qualifying the other part of the answer, Let it stand.

#### WRANGLES OVER THE LEGALITY OF QUESTIONS.

Mr. Evarts—Will your Honor be so good as to note my exception. [To the witness]: Do you mean to say, Mr. Tilton, that when you heard or knew of only the part that affected Mr. Bowen's signature, you were ready to sign?

Mr. Fullerton—One moment—I object to that.

Mr. Evarts—That is my question.

Mr. Fullerton—I know it is your question: that is the reason I do object to it; he has already stated the fact that when that paragraph was read he expressed a willingness to sign, and he has repeated it over three times, and now the question is put for the fourth. I object upon the ground that the question is distinctly, emphatically and repeatedly answered already.

Mr. Evarts—No such question has been asked. Whatever has been said has been said by the witness voluntarily, and I now ask this question.

Judge Neilson—I think he may answer.

Mr. Fullerton—It is only a consumption of time for nothing.

[Last question repeated by THE TRIBUNE stenographer.]

The Witness—Yes, Sir.

Mr. Fullerton—Now, after having said it, he asks him if he means to say it; that is the import of the question.

Mr. Evarts—Exactly. He has voluntarily made a statement not in answer to any question of mine.

Mr. Fullerton—Now, you ask him if he means to state it.

Mr. Evarts—I do, and I have got his answer.

Judge Neilson—We will allow that.

Mr. Evarts—That you mean to say? A. What was that?

Q. You do; you have answered, haven't you? A. Well, I don't understand now what your last question was.

Mr. Evarts—Won't you read the question again?

[Question again read.]

A. My recollection is, Sir, that I burst in with an extravagant expression that, "If Bowen will say that and sign that and blot that out, I will agree never again to circulate it; I will sign it twenty times over;" something like that; that is my best recollection.

Mr. Fullerton—Same thing over again.

Mr. Evarts—Are you finding fault with me or the witness?

Mr. Fullerton—I am finding fault with the mode of examination.

Mr. Evarts—I have never asked him the question over again.

Mr. Fullerton—No, but you have asked him if he means to state, and now he has said the same thing over again.

Mr. Evarts—He has said exactly the same thing.

Judge Neilson—Well, you seem to agree, gentlemen; go on.

Mr. Fullerton—Impatience at the repetition of the same thing over and over again which we had all day yesterday—

Mr. Evarts—Yes.

Judge Neilson—We cannot try the counsel, you know; we have got enough to do without that.

Mr. Fullerton—I don't want to try him; I only wanted to suggest to your Honor that there is a great deal of time lost in the repetition of answers and questions.

Judge Neilson—Well, that ought not to be, of course.

Mr. Evarts—Well, we will go on. [To the Witness.] When you made the gesture or expressed the purpose of readiness to sign, what prevented your execution of that purpose? A. Why, Sir, because a man makes a gesture he does not go and perform the act.

Q. I asked you what it was that prevented you? A. Prevented what?

Judge Neilson—That is implied plainly enough; he says, "If Bowen will do so and so." Mr. Bowen had not then signed.

Mr. Evarts—Does your Honor hold that my question is illegal?

Judge Neilson—I merely suggest that it does not seem to be necessary. The statement was that "If Bowen will sign that I will sign it a dozen or twenty times." Well, he had not signed it.

Mr. Evarts—If your Honor please, my question is either allowable or not allowable.

Judge Neilson—I make the suggestion.

Mr. Morris—Well, I object. The question assumes a fact that has not yet been proven, and I ask that the stenographer read the question. The witness has not pretended that he at tempted on that occasion to sign that paper. The counsel assumed that he had.

Mr. Evarts—We won't discuss the past.

Judge Neilson—What is the question?

Mr. Beach—Well, that is a proper suggestion ; we wont discuss the past.

Mr. Morris—I ask that the question be read ; I say it is an improper question, as assuming a fact that has not been proved.

Mr. Evarts—That is very proper, that the question be read.

Mr. Beach—The point is that the question assumes that there was a present purpose at the time of that gesture on the part of the witness to sign immediately the paper. No such thing appears.

Judge Neilson—Well, I suggested to the counsel that the whole thing was problematical, depending on the action of Mr. Bowen. Mr. Bowen had not yet acted, however. Go on.

Mr. Evarts—I am endeavoring to get the scene as it occurred. I have no knowledge concerning it that I shall venture to interpose in place of that of the witness. I must get it from him.

Judge Neilson—Although it appears that Bowen had not signed, and the statement is “if he will sign.”

Mr. Evarts—Well, isn't this a little discussing the effect of the evidence rather than the—

Mr. Beach—No, it is the character of the question that it assumes something that is a false impression.

Judge Neilson—Read that question. All this trouble arises from my departing from my usual course in making a suggestion perhaps. I will not do so again.

[Question read : “When you made the gesture or expressed the purpose of readiness to sign, what prevented your execution of that purpose ?”]

Mr. Beach—We object to the question upon the ground that it assumes that the witness then expressed a purpose of readiness to sign.

Mr. Evarts—We have had that over and over again.

Mr. Beach—No we haven't.

Mr. Evarts—That something or other prevented it.

Judge Neilson—I don't think you have got the correct conception of the evidence, allow me to say, as given. When Bowen had not yet signed, the witness says : “If Mr. Bowen will sign—do all that—I will do so and so.” It is hardly proper to understand that as a declaration of readiness and willingness, then and there, on the part of the witness to sign.

Mr. Evarts—I don't propose to discuss the weight with the jury of this or that exhibit of an occurrence.

Judge Neilson—Well, you are entitled to all that took place there.

Mr. Evarts—Now, my question is, I suppose, a proper one ?

[Question again read.]

Judge Neilson—Now, I disallow that, unless you leave out the word “purpose.” He did not express a purpose to sign it then and there ; he had expressed a willingness. Strike out the word “purpose,” and I will allow the question.

#### MR. BOWEN'S CONSENT MOST DOUBTFUL.

Mr. Evarts—I will. [To the witness.] What prevented the then present signing of it ?

Judge Neilson—Modify it in that way, Sir. [To the witness.] Now, answer it.

The Witness—Why, Sir, the paper was in no condition then to be signed. Mr. Bowen had not seen it—had not been seen either by Mr. Bowen or Mr. Beecher, so far as I knew.

Q. How did you know anything about that ? A. That is my recollection of it now.

Q. Who told you that ? A. My impression is that the paper was brought there fresh that day by Mr. Claflin, possibly by Mr. Wilkeson—the purport of their inquiry being this : whether or not, in case Mr. Bowen should sign such a paper, would I then sign it ; that is my recollection of the object of the interview. I said : “If Mr. Bowen will, certainly I will—twenty times over.”

Q. Now, what is your answer to the question, what prevented you then and there signing it ? A. I don't know that anything prevented me ; I might have signed it if I had chosen. If I had insisted on signing, I presume I could have signed it, and they would have been only too happy to have had me do it.

Q. Then, so far as you can now state to us, nothing prevented the signing of it that came from anybody else ? A. I don't know of any purpose to sign it ; I expressed my willingness to sign it, not my intention to sign it—my willingness.

Q. You took a pen in your hand, didn't you ? A. I took a pen in my hand and made a gesture, just as you are doing at me ; that is my best recollection ; yes, Sir. I was sitting at a table and took up a pen in this way. I said : “Bring me that paper If Mr. Bowen will sign it I will sign it,” and took up a pen, so.

Q. Now, do you remember some one saying to you, “Don't sign it first, or perhaps Bowen won't be so willing to sign after you have ?” A. No, Sir ; I don't recollect anything of the kind.

Q. Are you certain that nothing of that kind was said ? A. By whom ? Mr. Claflin—Mr. Wilkeson ?

Q. By anybody ? A. I don't remember anything of that kind being said. Mr. Moulton may have expressed some doubt that Bowen would sign it ; I expressed a doubt ; I think both expressed doubts.

Q. Well, have you no recollection or impression that some one said what I have embodied in my last question ? A. What was that, Sir ?

[Question read by TRIBUNE stenographer—“Now, do you remember some one saying to you, don't sign it first or perhaps Mr. Bowen won't be so willing to sign after you have ?”]

The Witness—I don't recollect anything of that sort ; my impression is that Mr. Moulton said that he didn't believe that Mr. Bowen would sign it, or something of that kind ; throw the same kind of doubt on it that I had thrown.

Q. Do you remember whether Mr. Claflin said anything at this point ? A. I remember Mr. Claflin clinching his hand together in this way, saying : “Mr. Bowen has got to sign it.” That is what I remember.

Q. Did you remember Mr. Claflin saying you better not sign it before Bowen does, for perhaps he won't be so willing to sign after you have signed ? A. No, Sir ; I don't remember that.

Q. Are you certain he did not say that ? A. Oh ! I won't be certain, but I have no recollection on the subject.

Q. Now, Sir, do you think that the whole of that paper was not read by you, or read to you, that evening at that interview ?



A. I have already said, Sir, that I don't remember whether it was or not.

Q. Whether it was or not? A. This is true, however, that if the remaining paragraphs were read, they were glazed over; they were not talked about and my attention was not specifically drawn to them, for I remember being struck as soon as I took the paper myself the next day and read it carefully over, with the extraordinary words that were put into my mouth, which I said I would never sign to the day of doom.

Q. Very well, now; is it your best impression that at that interview, occurring to see whether you would sign the paper, the parts of it that affected yourself were not made the subject of consideration? A. I don't think they were, Sir, any further than that—would I be willing, in case Mr. Bowen signed, to sign myself.

Q. And how was it to be decided or determined whether you would sign the paper if the parts that were to affect you were not considered? A. What is that, Sir?

Q. How were you to decide whether or no you would sign that paper if the parts that affected you in it were not considered? A. Why, Mr. Evarts, the part which I was to assume in that agreement had already been spoken of, namely, would I pledge myself, in case Mr. Bowen blotted out his charges against Mr. Beecher, not to circulate those charges after he had blotted them out; we had orally talked of it.

Q. With whom? A. Mr. Claflin.

Q. Anybody else? A. Well, Mr. Moulton.

Q. In company with Mr. Claflin? A. I think so.

Q. Yes. Very well, when were those previous conversations? A. I think Mr. Claflin came to Mr. Moulton's house one day about it.

Q. While you were there? A. Yes, Sir.

Q. How long before this? A. Well, I should think a day or two.

Q. A day or two? A. Yes, Sir; but that is a little indistinct in my mind. I remember having a conversation with Mr. Claflin, in Mr. Moulton's parlor.

Q. Upon some day—a day or two, or about that, before this meeting? A. Yes, Sir.

Q. You are quite confident of that, are you? A. I think there were two or three interviews with Mr. Claflin, mainly held, however, by Mr. Moulton before this agreement culminated.

Q. Well, I only speak of those at which you were present? A. Yes, Sir, I distinctly remember being present at two with Mr. Claflin—the one was in Mr. Moulton's parlor, another in Mr. Moulton's study. At the same time they may be two parts of one interview.

Q. Still, your best impression is that a day or two or more before this occasion where the paper was present you had had a discussion with Mr. Claflin and Mr. Moulton about a paper to be prepared? A. I don't think we had had any discussion about a paper.

Q. Well, about the subject? A. Yes, Sir.

Q. That was afterwards contained, more or less, in the paper? A. Yes, Sir.

Q. Now, who took away that paper? A. What paper, Sir?

Q. That draft. A. I don't remember.

Q. That night—that interview? A. I don't remember.

Q. Did you take it away? A. I don't remember that; don't remember whether I took it away, or saw it the next day in Mr. Wilkeson's office, or a day or two after.

Q. Now, did you see it again and when? A. When I was asked to sign it I declined to do so; I declined to sign the paragraph attributed to me.

Q. That is not my question.

Judge Neilson—The question was when did you see it again?

The Witness—Well, it was when I was expected to sign it; I don't remember that particular date—about that same time.

Q. Can't you tell me when, in relation to this interview which you have described, when the draft was there, when you next saw it? A. I don't remember the day or the hour.

Q. No; but how near the time? A. Oh, I should think very near.

Q. And where? A. My recollection is that it was in Wilkeson's office, in what used to be the North Pacific Railroad; that is my best recollection.

Q. In whose possession was it then? A. I think it was in his.

Q. Well, did you call for it? A. I don't remember that.

Q. Was it produced? A. Why, it was there between us.

Q. Whether you asked for it or not, you don't know? A. I do not remember; whether or no, I had had it meanwhile, in order to change my paragraph, I don't know—

Q. No matter—the fact, that is what I am trying to get at? A. I do not remember.

Q. At the fact whether you had it or not? A. Well, I do not remember.

Q. Now, at this interview—this meeting with Mr. Wilkeson, when this draft was again before you, did you then peruse and consider the whole of it? A. That I cannot answer; my recollection is, Mr. Evarts—

Q. Well, that is all I have asked you—you cannot say whether you perused it, considered it?

Mr. Beach—Then?

Mr. Evarts—Then I mean, of course, I have your answer.

Mr. Beach—Yes, but you broke him up in an addition to the answer which might have been acceptable.

Q. When again did you see that draft? A. I don't remember the date.

Mr. Beach—Do you understand him to say that it was the draft he saw?

Mr. Evarts—Yes.

Mr. Beach—I don't.

Mr. Evarts—Well, I will get that right. [To the witness.] I have asked you about the draft; it was the draft you saw at Wilkeson's, wasn't it? A. I was going to tell you what my recollection was, and then you stopped me.

Q. Stereographer, you read my last question to see if I didn't get an answer to it. Was it the draft that was before you and Wilkeson, at this interview at the Northern Pacific Railroad office? There was some paper before you—was it the draft? Now, that is the only question. A. I do not know whether it was Wilkeson's draft of what he proposed for me to sign, or

whether it was my draft of what I proposed to sign; it may have been both drafts.

Q. Can you or no tell me whether or not Wilkeson's draft which had been before you at the interview with Claflin, Moulton and himself was before you, too, before Wilkeson and yourself at this interview at the railroad office? A. That may have been; if so, then it was there in order that my proposed change should be put into it.

Q. No matter what it was there for. I have not asked you what it was for when there. I asked you if it was there? A. I don't know.

Q. You don't remember? A. No.

Q. Either way? A. No.

Q. When, if at all, was that draft taken into your possession and made the subject of amendment or change by you? A. I do not remember the exact date.

#### THE WAY THE AWARD WAS MADE.

Q. Now, have you a copy of the award that was made by these arbitrators. A. Yes; it consisted of Bowen's check for \$7,000; I believe I have it; that is the only copy.

Q. You got the check? A. I do not know whether I have or not; I got the money.

Q. Well, I would like to see it.

Judge Neilson—You would not naturally have the check. A. I do not know whether I have it or not; Mr. Bowen has it—

Judge Neilson—It would go back to Bowen, of course. A. Yes.

Mr. Evarts—But I do not know whether he has it; of course, he would not keep the check as a security for money.

Judge Neilson—He would not delay drawing the money.

Mr. Evarts—It has been already proved that the money has been drawn and deposited; it is the paper itself that I would like to get.

Mr. Morris—Well, we haven't got it, of course.

The Witness—What paper do you refer to?

Q. Mr. Bowen's check. A. Well, no, Sir; I had Mr. Bowen's money; that is what— You asked me if I had a copy of the award; I told you that the only award was Mr. Bowen's check—there was no other paper. That is all I cared for—cared for to get.

Q. Now, was Mr. Moulton with you when you received that check? A. My impression is that all the arbitrators were there.

Q. Mr. Moulton was not an arbitrator? A. No, Sir. He was there too; it was held in his dining room.

Q. Well, I am asking for the fact; was Mr. Moulton there? A. Yes, Sir; he was there.

Q. And did you then and there hand over to him the check? A. No, Sir; he then and there handed over to me the check.

Q. No; but to Mr. Moulton, I am talking about? A. Oh! I don't remember that—my impression is I kept it.

Q. Well, do you remember Mr. Moulton was there? A. Yes.

Q. Now, my question is, did you then and there hand the check to him? A. Mr. Moulton?

Q. Yes. A. I think not; I think I took the check home; showed it to my wife.

Q. Have you a clear recollection of that? A. No, Sir; not very clear; I think I gave the check next day to Franklin Woodruff for deposit.

Q. As a deposit? A. Yes, Sir; that is my recollection.

Q. Next day after you received it? A. I think so; perhaps two days after.

Q. And not to Moulton personally? A. I think not, Sir.

#### RECORDS OF THE CHANGES IN THE COVENANT.

Q. Now, where have you any draft or record of any changes you have made in this original draft? A. Have I any draft of them?

Q. Have you any draft; yes? Any draft or record? A. No, Sir; but Wilkeson has.

Q. Of the changes? A. He has the paragraph which I proposed; it was in my writing: I displaced his paragraph and substituted my own; he has that.

Q. He did have it at that time? A. Yes; and he copied from that—made the clean copy in his own handwriting.

Q. It was left in his possession—that draft? A. Yes, I believe it was.

Q. Your draft, as you remember, then, the article relating to this in the tripartite agreement, is in your own language? A. I do not know whether it is entirely in my own language; I think it is in my own handwriting. My recollection is (if you will hand me the book) that I adopted a part of Wilkeson's paragraph.

Q. That, of course, may be; I mean to say that the paragraph as it appears, was as you presented it in shape? A. I do not think I composed the entire paragraph. I think I took a part of his composition and changed it—but my recollection is that the whole paragraph which I proposed to sign he handed over to me in my handwriting; and that he then made the clean copy of the covenant with my section copied from my handwriting in it, and that then I signed it.

Q. Then as it reads it is as you presented it for insertion? A. Yes, Sir.

#### HOW THE SIGNED PAPER WAS EXECUTED.

Q. Now, when you presented this paragraph for insertion, was the copy ready for signature, prepared, in your presence? A. That I do not remember.

Q. By Mr. Wilkeson? A. I don't remember that.

Q. You do not remember it? A. No, Sir.

Q. You do not remember whether you signed it at that interview? A. I don't remember; no, Sir.

Q. Do you remember that you signed it the first of the parties? A. I don't remember that.

Q. Do you remember whether the parties were together when it was signed, and signed it in the presence of each other? A. I remember that they were not; they never were together.

Q. Never were together? A. No, Sir.

Q. And what signatures were on it when you signed it, if there were any, you do not know? A. I don't remember; my impression is that Mr. Beecher signed it first.

Q. That it was on when you signed? A. That is my impression; I will not be certain.



Q. And that Mr. Bowen's was not on when you signed? A. I don't remember, Mr. Evarts; on second thought, my impression is that Mr. Bowen signed it first; that I signed it next and wrote my name over his; and that Mr. Beecher signed it last, and wrote his name over mine; fulfilling the Scripture, that "the first shall be last and the last first;" that is my recollection. I will not be positive.

Q. That differs from your recollection a moment ago? A. Yes, Sir; it comes to my mind.

Q. Was this paper executed in triplicate? A. No, Sir; there was only one copy.

Q. Only one copy? A. Yes, Sir; that was the understanding; that understanding was not kept, however, for Mr. Wilkeson retained a copy, and afterwards published it without authority.

Mr. Evarts—I ask to have all that stricken out.

Judge Neilson—Strike it out, undoubtedly.

Mr. Evarts—I asked you if it was in triplicate, and you said there was only one copy? A. No, Sir; I did not say that. I said the solemn agreement was that there should be only one copy, but that was broken.

Q. That is not my question; I asked whether it was executed in triplicate, or if there was only one copy executed? A. I say that our understanding was that there should be only one copy, but there were two copies; Mr. Wilkeson made one and kept it.

Mr. Evarts—That is not my question. I ask if it was executed in triplicate? A. Only one paper was signed.

Mr. Evarts—That is all my question. I ask that all the other part be stricken out.

Judge Neilson—Certainly; the rest can be inquired of afterwards.

Mr. Evarts—Undoubtedly, if important.

#### OTHER CIRCUMSTANCES OF THE COVENANT.

Q. Who kept that single copy? A. Mr. Horace B. Claflin.

Q. Was it delivered to him in your presence? A. I do not remember.

Q. In whose hands did you leave it when you signed it? A. My best recollection is it was—perhaps Charles Storrs; possibly Frank Moulton's; still—

Q. Charles Storrs was one of the arbitrators? A. Yes, Sir; I will not be positive about that.

Q. But he was one of the arbitrators? A. Oh! yes, Sir.

Q. Now, who were present when you signed it? A. I do not remember that.

Q. Well, somebody was; you remember some one? A. I don't remember that anybody was; I don't remember now; I don't remember where I signed it.

Q. Well, was Mr. Wilkeson present? A. That I do not remember.

Q. Was Mr. Claflin present? A. I do not remember that.

Q. Was Mr. Storrs? A. I don't remember that.

Q. Was Mr. Freeland? A. I don't remember; I remember that he was not.

Q. You remember that Mr. Freeland was not? A. Yes, Sir, because he had nothing to do with the business.

Q. No matter about your reason. You remember that he was not? A. Yes, Sir.

Q. Was Mr. Bowen present? A. No, Sir.

Q. Was Mr. Moulton present? A. Possibly; he may have been; I am not sure.

Q. But this scene is not before you? A. No, Sir.

Q. So that you can reproduce it at all, in the persons that were there? A. No, Sir; I do not remember the place or the time that I put my name on that paper, and that is the reason of my indistinctness.

Q. You have nothing before you now—no picture in which you can present it at all? A. No, Sir; it does not come up to my mind.

Q. And can you not tell us at all whether it was left in your hands, after you signed it, or whether it was left in some one else's hands, after your signing it? A. Well, Sir, my memory is too indistinct to answer that; my impression is that the paper lingered for several days before all the signatures were got; whether Charles Storrs got them or Mr. Moulton got them I do not know.

Q. Now, Sir, do you remember whether or no you had received the check of Mr. Bowen before you signed this paper? A. I received the check of Mr. Bowen on the night of the arbitration. I don't think the paper was signed until a few days after that.

Q. Are you certain of that? A. I think I am positive of that, Sir.

#### SEVERE STRICTURES ON MR. WILKESON.

Q. Upon reflection, can you recall whether you had not signed the paper, and were without your money after it was signed? A. No, Sir; no such incident occurred. That was Mr. Wilkeson's statement, and it was a falsehood, put before the Investigating Committee; Mr. Wilkeson published a statement to the effect that I declined to sign the tripartite covenant, because Mr. Bowen had not paid me; that was a lie; Mr. Bowen paid me on the spot, the spur, within half an hour from the arbitration.

Q. Now, your recollection is distinct, is it, that you had the check before you signed the paper? A. My recollection is this, Sir, that the check was paid to me on that very night of the arbitration; and the paper was signed some days afterwards—first one signature, then another, and then another.

Q. It is your own signature that I speak of? A. My impression is that my signature was two or three days afterwards; that I had had this discussion with Mr. Wilkeson about the paragraph that I was to sign.

Q. Are you certain that you received the check before you signed the paper? A. Yes, Sir, because the paper was not signed until afterwards.

Q. Now you say you cannot remember when or where you signed that paper? A. I don't remember the exact spot; I remember there was a discussion which followed it, of two or three days.

Q. Nor the exact time? A. No, Sir; only I remember this very distinctly, that the signing of the paper had nothing to do with the arbitration, or the payment of the money.

Mr. Evarts—That I did not ask you, and I will ask to have it struck out. Mr. Stenographer, that will be struck out.

Mr. Evarts [to Mr. Morris]—Now, gentlemen, have you the pages of the "True Story," as it is called?

Mr. Morris—No, Sir; I have not got them.

Mr. Evarts—I ask now, if your Honor please, from the counsel of the plaintiff, the production of the preserved pages of the "True Story;" I gave them notice.

Judge Neilson—They will undoubtedly give them up if they have them.

Mr. Evarts—I gave them notice to produce them yesterday—that I would need them this morning.

Mr. Beach—They ought to have been produced. What is the reason they have not, Mr. Morris?

Mr. Morris—I have not got them in my possession.

The Witness—I didn't understand that I was requested to bring them.

Mr. Evarts—No matter.

Mr. Beach—Oh! yes; it is matter.

Mr. Evarts—I was not asking him any question; I was asking the papers from counsel.

The Witness—I will bring them to you at 2 o'clock.

Mr. Morris—[To Mr. Evarts.] I didn't have them, Mr. Evarts.

Judge Neilson—Mr. Evarts, perhaps if you proceed to some other topic, they will bring them at 2 o'clock.

Mr. Beach—Yes, we will bring them to you at 2 o'clock, after Mr. Tilton goes home from the witness stand; he didn't understand that he was to bring them; he thought that the request was addressed to counsel. I didn't think of attending to it, as I supposed Mr. Morris had all the papers.

#### THE READERS OF THE BOWEN LETTER.

Mr. Evarts—We will pass, then, if your Honor please, to another subject. [To the witness]: Now Mr. Tilton, you prepared for publication, or put in type, Mr. Bowen's letter, with comments—do you remember? A. Yes, Sir.

Q. Now, Sir, has the date of that been fixed—the date of this publication? [Turning to Mr. Shearman.] Has that been fixed, Mr. Shearman?

The Witness—The end of March, 1872.

Mr. Evarts—Yes; I think you did fix it.

The Witness—I mentioned it to you yesterday.

Q. Yes; now, when you put that in type or shape, as it is here, as an exhibit, to whom did you show it? A. I don't know that I showed it to anybody after it was in type; I discussed it with Oliver Johnson before it was in type.

Q. That we have; now it was put in this slip form? A. Yes, Sir.

Q. My question is to whom did you show it?

Mr. Beach—After that?

Mr. Evarts—Yes, after it was in that shape.

The Witness—I don't recall, at this time any one to whom I showed it; Mr. Moulton had it and showed it to Mr. Beecher, I think.

Q. Oh! that is what he did; I ask what you did? A. My

impression is that Mr. Beecher was present, and that Mr. Moulton showed it to him, and that I was present.

Q. And in your presence? A. I think so.

Q. Now, to whom else did you show it? A. Outside of my counsel, I don't remember anybody, at present.

Q. You think you did show it to your counsel? A. I think I showed it to Mr. Ward; I don't know whether I showed it to Judge Reynolds or not.

Q. Are you confident in your recollection, Mr. Tilton, that you did not show this, at that time, to any one but Mr. Moulton and Mr. Beecher and your counsel? A. I think at that time nobody saw it; after that time a number of people saw it.

Q. I speak now of that time. A. I don't remember now that any one saw it, except through Mr. Moulton; Mr. Claflin saw it, and Mr. Bowen, but not through me.

Q. I speak of what you did? A. Still I may be wrong about it; I don't remember.

Q. And how soon after this do you think you did begin to show it to other persons? A. My impression is that nobody saw it until after the Woodhull publication, in November, and I was joining with Mr. Moulton in making devices, as part of the—

Mr. Evarts—No matter. I ask that that be struck out. It is the date that I am asking for. Was it not in December, 1872? A. Yes, Sir.

Q. Do you remember whether you showed it to Mr. Wilkeson before the tripartite agreement or covenant was signed? A. Why, it was part of the tripartite agreement—the article.

Q. Before it was made a part of it? Why, of course.

Q. Before it had been agreed upon? A. It was a part of the tripartite covenant—pasted fast to it.

Mr. Evarts—I understand that.

Mr. Beach—It must have been shown, then, to Mr. Wilkeson.

Mr. Evarts—We will see. [To the witness]: How early did you show it to Mr. Wilkeson? That is the fair way to put it. A. Do you mean on that day?

Q. How early in the transaction of the tripartite agreement did you show that paper to Mr. Wilkeson? A. I don't remember, Sir.

Q. Did you show it to him before it became part of the tripartite agreement, and before the text of the tripartite agreement had been presented? A. Why, of course.

Q. Very well? A. How otherwise could it have been made a part of the agreement?

Q. It is not necessary to reason with me about it. I take your answer—"of course you did." Now, can you tell me at what time you did show it to Mr. Wilkeson? A. No, Sir; while these negotiations were pending—while this discussion was pending.

Q. And before the tripartite agreement had received the consent of the parties, or it had been adopted—before it was ever written by Wilkeson? A. Why, yes, Sir; for the writing of it referred to this paper.

Q. Did you show it to him before the arbitration was agreed upon? A. I don't remember.



## WHEN THE ARBITRATION WAS AGREED TO.

Q. Now, when was the arbitration agreed upon?

A. That I don't know. You will have to ask Mr. Moulton.

Q. And how long a time before the tripartite agreement, or the award, you cannot tell? A. Oh, a few days before.

Q. Recently—quite a few days. And up to that time no arbitration had been fixed? A. To what time?

Q. Up to this time—just a few days before the tripartite agreement and the award, or either of them. No arbitration had been agreed upon for the differences between Mr. Bowen and yourself. A. No arbitration save that one; there was only one arbitration; that was only a few days before.

Q. It was ended by an award? A. Yes, only a few days; I do not know; I don't remember how many—not many.

Q. Had you then any suit pending—commenced against Mr. Bowen? A. Yes, Sir.

Q. In what court? A. Well, I don't know in what court—perhaps this one; Mr. Ward commenced a suit in my absence.

Q. There was a suit pending, which had been commenced during your absence? A. I don't know whether it was a suit, or whether it was what you call supplementary proceedings. Is that a suit?

Mr. Beach [laughing]—Oh, no.

The Witness—To take testimony, or something of that kind.

Mr. Evarts—I once heard of a young lawyer who commenced a suit by a *fi fa*; and in that sense it might be a suit.

The Witness—Mr. Ward can tell you just what it was.

Q. It was a suit or some proceeding? A. Some proceeding; I don't know whether it was a suit.

Mr. Evarts—Some proceeding at law, for the collection of a claim—is your notion? A. Yes, Sir.

Q. I have gone back, I think, from the question. You said December. Now, who did you show this article to in December, including the Bowen letter—this slip? I don't remember that I showed it to anybody, simply as an article by itself, but only in connection with what was called the "True Story;" perhaps, however, I did to Mr. Belcher; I think I did to Samuel Belcher.

Q. Now, I am inquiring about nothing at present except this article put into slip form, in type, by itself and as a separate paper. You think you showed that to Mr. Belcher? A. Yes, Sir.

Q. And at this time, in December? A. I do not remember; it may have been earlier than that.

## HOW THE PROOFS OF THE LETTER WERE GUARDED.

Q. Do you remember how many slips you had of that paper? A. Three slips were printed, I think; I afterwards learned that a printer had found one and showed it—

Q. I do not ask that; I ask how many slips were made? A. I think three slips.

Q. If there were more printed let me know it? A. I afterwards learned that a copy had been dropped, as I was told, from

my pocket in my printing office; whether that was true I do not know; but I was told that a printer found it and showed it to the Rev. Dr. Field, editor of *The Evangelist*, whose printing office was on the next floor to mine.

Q. This was all rumor? A. It was not all rumor, for the Doctor told me that he saw it.

Q. I thought you said that you were told; you say he saw it? A. Yes, Sir; but he did not see it through me; he saw it through another party.

Q. You did not show it to Dr. Field? A. No, Sir; I did not.

Q. And you knew only of three slips? A. That is all; I think there was a third; I think only three altogether.

Q. Now, what became of these three slips? A. One went to Mr. Wilkeson, and is imbedded in the tripartite covenant, and is here in Court; the other is in our possession, with Mr. Johnson's amendments.

Q. We have that here.

Mr. Morris—It is in evidence.

The Witness—Is it?

Mr. Evarts—That is two.

The Witness—I have the idea that there was only one completed slip.

Q. That is two. Now, where is the third? A. Only one completed slip. I have given you an account of them.

Q. I have had two, give us the third? I have already told you that one copy was picked up by a printer.

Q. You heard that? A. I think that was an incomplete copy, without Mr. Johnson's manuscript amendments. The copy which Judge Morris and I have is incomplete, except so far as it is completed in Mr. Johnson's handwriting; I think the copy in the tripartite covenant is complete in type; still I will not be certain.

Q. Well, now, these three slips are all you know of? A. They are all; perhaps I had a complete one myself; I do not know; I think it was quite likely I had.

Q. Then one was lost, and the other two are produced here? A. Yes, Sir; I think I had a complete slip of my own, on second thought.

Q. Besides? A. I think I had.

Q. What became of that? A. I think that was the one I showed to Mr. Belcher; I don't know what has become of it; I think I showed it to Mr. Harman; I don't know what has become of it.

Q. That would make a fourth? A. Yes, Sir; that would be a fourth.

Q. Now, were these slips struck off at the same time? A. I think they were; I think they were struck off at two different times; that is, I think, after Mr. Johnson's amendments were written in manuscript on the proof, then the proof was corrected.

Q. Exactly; but I mean at the same period of time? A. Yes, Sir, within a day or two; then the type was distributed.

Q. Yes; now, Mr. Tilton, are you quite certain that the type was not preserved in that shape, for a considerable length of time, and not distributed? A. I gave orders that the type should be kept, meanwhile, in Mr. Russell's care, and that no

printer should get access to it, and the moment the slips were made the type was destroyed.

Q. Was that done, as you understood? A. I have every reason to believe it was.

Q. Then you do not know that after being preserved in your safe, or the safe of the establishment, in the composition of the type? A. It never was preserved in any safe; it was locked up over night, in order that nobody might surreptitiously get a copy of it.

Q. Then, in December, there were no slips, except such as had been made in the preceding March? A. No, Sir.

Q. Now, did you give one of those slips to Mr. John W. Harman in December? A. I loaned him one.

Q. Well, you left it in his possession? A. Yes, Sir; I will not be sure of the date; it may have been November; I rather think it was.

Q. About that time; it was after the Woodhull publication? A. I think I showed it to Mr. Harman long before that.

Q. Before the Woodhull publication? A. Yes, Sir; and then I showed it to him afterwards. He wanted to borrow it afterwards. Mr. Harman was an intimate friend of mine, and I consulted him frequently about my affairs, and I showed him that slip.

Q. I didn't understand you as saying, just now, that Mr. Harman was one of those you showed it to.

Mr. Beach—He did.

Judge Neilson—He mentioned his name before.

Mr. Evarts—I understand that, but I understood he mentioned that as having been shown to him after the Woodhull scandal.

The Witness—I think he sent a request to me that he might see that proof, to refresh his mind with the contents.

Q. That is, after the scandal he sent that request? A. Yes, Sir.

Q. And you think you showed it to him before? A. Yes, Sir; I think he also wanted to see Mr. Bowen's letters to me.

Q. No matter about anything else. Strike out all that relates to that.

Q. Now, do you remember, in November or December, after the Woodhull scandal, handing this to Mr. Harman upon his request, or otherwise, and saying to him that you didn't care what he did with it? A. No, Sir; I don't remember that. Mr. Harman borrowed my letters from Mr. Bowen, and that slip—

Q. I am not asking you that. No matter, Mr. Tilton; I am not inquiring about that. I am asking about this very slip, whether you handed it to, or left it with, Mr. Harman upon his request, or otherwise, after the Woodhull scandal was published, and told him you didn't care what he did with it? A. No, Sir; I gave no such—

Mr. Evarts—Well?

The Witness—You must allow me, Mr. Evarts, to speak the exact meaning. I committed it to Mr. Harman's discretion, that he might make such use of it as he, in his judgment, thought right. I didn't say to him I didn't care what he did with it; I cared a good deal what he did with it.

MR. TILTON DISTRUSTS A BROTHER JOURNALIST.

Q. What form of words did you use in confiding this discretion to Mr. Harman? A. Words to this effect: that I committed it to his judgment and care. Mr. Harman had it two or three times. On one occasion I remember that a gentleman from a newspaper office had called to see me, and wanted very much to see that proof, and I didn't show it to him. I think he said that Mr. Harman had spoken of it. I went to Mr. Harman's house with the proof; Mr. Harman was not there. I left it with him—I left it at his house, inclosed in a note; I don't know what that note said.

Q. But that note confided the discretion, did it? A. Yes, Sir. In other words, I would not show it to this gentleman from a newspaper office on his request, but I went to Mr. Harman's house to see him. He was not there. I left it in a sealed envelope with him with some request; I don't remember the phraseology.

Q. But expressive of submitting it to his discretion to do what he thought best with it? A. I committed it to Mr. Harman's discretion to do what he thought right under the circumstances.

Q. Who was the newspaper man who came to you? A. [Pointing.] That man over there, Mr. McKelway.

Q. Mr. McKelway of *The Eagle*? A. Yes, Sir.

Q. And after that did he apply to you for it for publication? A. Mr. McKelway?

Q. Yes, Sir. A. I don't remember whether he did or not.

Q. What is the best recollection that you have? A. My impression is that he wanted to see it. I didn't feel safe in showing it to him. He intimated to me that he had talked on the subject, I think, with Mr. Harman; at all events, I knew Mr. McKelway was a very enterprising newspaper man and I didn't wish to put it into his hands for publication.

Q. You understood that, in his enterprising way, he had come to you with the purpose of publishing it, if he could, didn't you? A. No, Sir; I don't think he came there with such an intention; I think he came as a personal friend; I think he came disavowing any desire to publish it, but rather to know the circumstances.

Q. Are you sure he disavowed the purpose of publishing it? A. Mr. McKelway made a very kindly and pleasant call on me one evening to sympathize with me in regard to this scandal.

Q. Well, no matter about the generalities. In consequence of that call from Mr. McKelway you put this in the hands of Mr. Harman? A. It had been in Mr. Harman's hands before.

Q. I understand that, but you put it in this sealed package with this note? A. Yes, Sir; Mr. McKelway wanted to see it, and I didn't want to show it to him.

Q. And you submitted it to Mr. Harman to decide? A. Yes, Sir; I thought if Mr. Harman was willing Mr. McKelway should see it—if his judgment dictated it, he might do as he chose with it.

Q. Now, Sir, that paper was published in Brooklyn? A. Yes, Sir,

Q. How soon after you had put this sealed in Mr. Harman's hands? A. I should think five or six months afterward.

Q. Five or six months? A. Yes, Sir.



Q. Now, did you have any notice that it was going to be printed or published before it was published? A. No, Sir.

Q. Was your seeing it in *The Eagle*—as you have stated, I believe—

Mr. Beach—No.

Mr. Evarts—He says he saw it copied into *The Eagle*.

The Witness—It was copied into *The Eagle* one Monday night.

Mr. Evarts—That is where you saw it? A. Yes, Sir.

Q. Was your seeing it in *The Eagle* the first suspicion you had that it was going to be published? A. I don't know whether I saw it in *The Sunday Press* or not.

Q. Or in the other papers? A. Yes, Sir.

Q. I thought you were uncertain about seeing it in *The Eagle*, and that is the reason I put it in this way? A. There had been two or three threats to publish it before that, and I wanted to see Mr. Van Anden about it.

Q. Who had made these threats? A. I don't know; there had been some talk that that letter was in *The Eagle* office, and I once had a little conversation with Mr. Van Anden—

Mr. Evarts—Well—

Mr. Beach—Wait, wait!

The Witness— —and I told him that to publish anything of that sort would be only to publish part of the story.

Mr. Evarts—If the witness will only wait, I am objecting to his answer.

Mr. Beach—Well, so am I.

Mr. Evarts—I beg your pardon. [To the witness.] Now, Mr. Tilton, who made these threats of publication? A. I don't remember; I think it was simply the floating gossip of the town that *The Eagle* had possession of a scandal which it might publish if it would. I don't know that any threats were made; I should not call them threats; it was gossip.

Q. Do you know Mr. McDermott, connected with the press in Brooklyn? A. Yes, Sir.

Q. Was he connected with *The Sunday Press* at the time this paper appeared in it? A. I afterward learned that he was.

Q. Now, do you remember his seeing you in advance of any publication of it in *The Sunday Press* or *The Eagle*, and informing you that it was going to be published? A. No, Sir. I remember that after he had published it, he came into my office of *The Golden Age* and I ordered him out.

Mr. Evarts—Well, I ask to have that struck out.

Mr. Fullerton—That he was ordered out.

Mr. Evarts—Yes. The stenographer will strike that out.

#### AN OLD JOKE REVIVED.

Mr. Evarts—Are you quite sure that Mr. McDermott didn't tell you in advance of that publication that it was going to be published? A. Yes, Sir, as certain as that the day of judgment will come.

Q. As that is a future event, you should say "sure," should you not? A. That is one of those things of which we are all certain. It is a saying of the Almighty.

Q. But still it is the future? A. The Great I Am; The Evermore Present.

Mr. Evarts—Well.

Mr. Fullerton—[To Mr. Evarts.] You give it up, do you?

Mr. Evarts—You mean by that that you are entirely certain that he did not come to you? A. I did not know Mr. McDermott—I didn't know him until he came into my office and presented his card after the publication. I asked him if he was the man who published that paper, and he said he was, and I ordered him out of the office.

Q. That is all very well. You did not know the man? A. I did not know him at all.

Q. Do you know that any one came to you and told you in advance of its publication that it was going to be published? A. No, Sir, I have no recollection of any such thing.

Q. Are you certain that nobody came to you and told you that it was going to be published in advance of its publication? A. No, Sir, I have no recollection of any such thing at all.

#### HOW THE BOWEN LETTER REACHED THE PUBLIC.

Q. As far as you know and understand, Mr. Tilton, this slip that you had confided to Mr. Harman was the source from which the publication came, was it not? A. Not at all.

Q. Well, what slips do you understand it came from? A. My understanding is this: I never quite comprehended until a few days ago how that slip came to be published. When I saw Mr. Kinsella's correspondence published, he said in that that Mr. Beecher had shown to him the tripartite covenant, or, at all events, Mr. Bowen's denial, and I saw there an explanation of how, possibly, *The Eagle* might have got hold of that article.

Q. Well, that is, you saw that the tripartite covenant might have furnished the means of the publication? A. Yes, Sir.

Q. That was your own imagination, was it not? A. Yes, Sir.

Q. That it did? A. I never have known until this day exactly how *The Eagle* got hold of the paragraph.

Q. Then you don't know that the copy given to Mr. Harman by you was the means or source of the publication? A. No, Sir; I do not.

Q. Did you ever receive back from Mr. Harman that slip that you confided to him, or did it ever come back into your possession? A. I think he gave it back to me.

Q. When? A. I think about that time.

Q. About what time? A. Shortly afterward. That is my impression. Shortly after the time when it was—

Q. Published? A. No, Sir. Shortly after the time when it was confided to him.

Q. That is your impression? A. I think so. Mr. Harman would know better about that than I.

Q. Where is it? A. Well, Sir, my—I don't know where it is if it is not the same proof that we have here in evidence.

Q. You have but one, have you? A. It may have been that one or it may have been another. If it is another, I don't know where it is.

Q. Have you any recollection that it ever was returned to you? A. I think it was returned with Mr. Bowen's letters. That is my impression. I won't be certain, because once or twice Mr. Harman and I saw the paper and talked the matter over.

Q. You won't be positive that it ever came back to you? A.

Mr. Harman will know better about it than I; I think it did, though, come back.

Q. I have understood you to say, Mr. Tilton, that there were but three copies, either in the incomplete or the complete form, of this slip? A. I said afterward there might have been another.

Q. Well, I remember that, of course. A. Yes, Sir.

Q. That would make a fourth? A. Yes, Sir.

Q. That, perchance, is a fourth? A. Yes, Sir.

Q. But that is all, complete or incomplete? A. That is all that I remember of.

Q. That you know of? A. Yes, Sir.

#### MR. TILTON AS A CHURCH-GOER.

Mr. Evarts—We will have the True Story here at two o'clock, if your Honor please. I can occupy the space between now and then, with some things I omitted. [To the witness.] Do you remember, Mr. Tilton, whether or not you had left off going to Plymouth Church, or did leave off going to Plymouth Church as early as 1866? A. No, Sir, I had not; I went occasionally all the way down until the Spring of 1870.

Q. Now, how often do you think you went to that church in the year 1866? A. I don't remember.

Q. Did you go more than twice in that whole year? A. Oh! I went several times; I used to go occasionally.

Q. Not more than two or three times in a year, did you? A. Oh, yes.

Q. Just give us the fact? A. I know nothing about it; I went to church down until the Spring of 1870.

Q. 1866 I am asking you about? A. I don't remember the year; I cannot remember how many times.

Q. You did go occasionally in 1866? A. And in 1867, 1868, 1869 and 1870.

Q. Now, did you go more than two or three times in that year? A. I don't remember, Sir. I should say I went probably eight or nine times, perhaps a dozen times.

Q. Now, in the year 1867, did you go at all, and, if at all, did you go more than two or three times? A. I cannot say how many times.

Q. And, in the year 1868, what was your habit of attending that church? A. I think I went to church about as other people do.

Q. There is a great difference in that. A. What is that?

Q. There is a great difference in people as to the frequency with which they go to church. A. Yes, Sir.

Q. I would rather have your personal recollection? A. My recollection is that I went to Plymouth Church with more or less frequency while I was in town during all the years up to the Spring of 1870. You must remember, Mr. Evarts, that I was always away lecturing during three months of the year.

Q. We have got the history of it. A. And then Plymouth Church was closed two other months of the year.

Q. We won't argue about it; the fact about it is what I want if I can get it, whether you went in the year 1868 more than two or three times to that Church? A. I think I went with more or less frequency all the way up to 1870.

Q. Will you tell me how many times you went? A. I don't know how many times I went.

Q. So, in 1869, did you then go more than two or three times? A. I think I shall make the same answer; I don't know how many times.

#### WHAT PREPOSSESSED MR. TILTON IN FAVOR OF MRS. WOODHULL.

Q. You have said, Mr. Tilton, in regard to your visits at Mrs. Woodhull's house that you never passed but one night there? A. Yes, Sir; I have said that.

Q. Now, how late have you been there on those occasions? A. I should say eleven o'clock, perhaps.

Q. Not later? A. I guess not.

Q. Not till one, two or three or four in the morning? A. No, Sir; never in the small hours.

Q. Left at twelve? A. Yes, Sir.

Q. Were you ever on the second floor or the bedroom floor of that house? A. Yes, Sir; I went all through the house once in order that Mrs. Woodhull might show to me that every room was as bare as a barn. There was only one room occupied in it. That was her room, her husband's study, and another room which Mr. Andrews occupied. Every room in the house, from the top to the bottom, was as bare as a new house.

Q. Had it ever been stripped? A. I don't think it had ever been furnished.

Q. When was that? A. The circumstances are these—

Q. I am asking you the time of the year—when? A. I don't remember the date. I remember the circumstances. The circumstances are these: she asked me—

Q. I don't ask you for the circumstances; I ask you to give me the time as near as you can? A. Well, I tell you I cannot.

Q. You know whether it was in September or whether it was in June, or whether it was this or that part of your habit of visiting there? A. In the very early part of my acquaintance.

Q. In the very early part of your acquaintance? A. Yes, Sir; she wanted me to go through the house to see that there was nothing in it.

Q. And it was substantially bare? A. Yes, Sir; it was as bare as a new house.

Q. Was it a large, fine house? A. It was a splendid house.

Q. A double house? A. I don't know what you call a double house.

Q. A house with rooms on both sides of the door? A. I don't remember that; there was only one room furnished and that was the parlor.

Q. Did it continue to be in this condition during the whole period of your visiting there? A. I don't remember; I never went up stairs but that once.

Q. And that is all you know about it? Yes, Sir.

Q. As I understand you? A. That is all I know about it; yes, Sir. She told me her house had been called a house of ill repute, and she wanted me to see the whole of the house throughout, that there never was a chair nor a bed nor any article of furniture in it from the top to the bottom, save only the room she occupied and the room Mr. Andrews occupied and I think one which her mother and her sister occupied; otherwise



it was a great, empty, bare house. That was one of the circumstances that impressed me with the idea that she was a traduced woman.

Q. Do you understand whether it had been stripped by the lease or executions, or anything of that kind? A. No, Sir; I simply understood that it was an unoccupied house—that is to say, an unfurnished house.

Q. And had always been so? A. I never asked any question about it; I never thought on the subject from that day to this.

Q. Well, Sir, do you mean to say that you don't know whether it was ever refurnished? A. I don't know anything about it; I never heard anything about it. I don't know whether it is or not,

Mr. Morris—"Refurnished" implies that it had been furnished.

Mr. Evarts—Yes, Sir.

The Witness—I never understood anything about it; I never knew.

Q. During the period of your acquaintance you never knew whether it had been furnished? A. No, Sir.

Q. In whole or in part, beyond what you then knew? A. No, Sir.

#### MR. MOULTON DECLARED A FAITHFUL STEWARD.

Q. How early after the publication of the Bacon letter by you—your letter to Dr. Bacon—how early after that did any more papers, or copies of papers, which had been in Mr. Moulton's hands, connected with this matter, come into yours? A. My present impression is that none of them came into my hands. That is to say, when I made my sworn statement, which was a month after the Bacon letter, I then had no access to the papers. Then they were published in Mr. Beecher's statement.

Mr. Evarts—I am not asking you anything about Mr. Beecher's statement.

The Witness—Am trying to work it out in my own mind.

Mr. Evarts—I don't want you to work it out loud. I am willing you should reflect on it, of course; but my question is only in regard to a point of time.

The Witness—Yes, Sir.

Mr. Beach—I understand the question to ask when they came into his possession.

Mr. Evarts—Yes, that is so, in point of time.

The Witness—Well, Sir, they never came into my possession. I have seen the papers since this suit has gone on.

Mr. Evarts—Well, the question is this: How soon after the publication of the Bacon letter did either the papers themselves, that had been in Mr. Moulton's possession, or copies of them, and which were not already in your possession, come into your possession? Now, you say—

Mr. Morris—He has answered.

Mr. Evarts—I understand he has answered.

The Witness—I don't understand your question now.

Q. I asked you yesterday about the paper you had and what copies of papers you had. A. Yes, Sir; and I told you as well as I could.

Q. Well, we agree. That is all ended. Now, how soon after

you published the Bacon letter did any papers that were not before that time in your hands, or any copies of papers that were not before that time in your hands, of the papers which were in Mr. Moulton's hands, come into your possession?

Mr. Morris—You are a little mistaken, Mr. Evarts, in regard to your recollection of what occurred yesterday. Your inquiries yesterday were solely with reference to the copies that he had made of papers, and not whether any letters were in his possession or not; and he didn't speak of any letters as being in his possession, and you are assuming, Mr. Evarts—

Mr. Evarts—I am not assuming anything.

Judge Neilson—His question also reaches copies which may have been published.

Mr. Beach—Yes, Sir; but it improperly includes original papers, assuming that some had come into the possession of Mr. Tilton before that.

Mr. Morris—And there is no evidence that he had any—none whatever.

Judge Neilson—I think he may answer that question.

Mr. Evarts—I don't want to assume anything, but I want to find out when any papers he had beforehand came to him.

Judge Neilson—Or copies.

Mr. Evarts—Yes, Sir.

Mr. Beach—Well, your Honor, the question of the counsel, I think, improperly assumes that there were papers—original papers—which had been in Mr. Moulton's hands, that had been transferred to Mr. Tilton's possession before the Bacon letter.

Mr. Evarts—I don't think it does, if your Honor please.

Judge Neilson—Well, read the question. You don't intend that, I suppose, Mr. Evarts.

Mr. Evarts—No, Sir, I want to get at when papers which he had not beforehand came to him. If he didn't have any before, why, then, let him say so, of course.

Mr. Beach—Yes, Sir, but it rather misleads the witness. You don't want to do anything improper, I suppose?

Mr. Evarts—No; I only want his knowledge as to that point of time. [To THE TRIBUNE stenographer.] Please read the question.

THE TRIBUNE stenographer read the following question: "Q. Now, how soon after you published the Bacon letter did any papers that were not before that time in your hands, or any copies of papers that were not before that time in your hands, of the papers that were in Mr. Moulton's hands, come into your possession?"

Mr. Evarts—I don't think that assumes anything.

The Witness—I don't remember that any papers or any copies of papers came into my possession from Mr. Moulton's hands.

Q. From Mr. Moulton's hands, at all? A. I don't remember any. Mr. Moulton published, after that in his own statements, the documents which he had.

Judge Neilson—Those copies came to your notice? A. Those copies came to my notice.

Mr. Evarts—The witness understands the inquiry—what came from Mr. Moulton's hands. [To the witness]: I understand you to say that none did? A. I don't recollect of any, Sir. I recollect very distinctly going to Mr. Moulton, before my sworn statement was made,

and asking that I might see some of the papers ; and he declined—peremptorily refused.

Q. That you remember distinctly? A. Yes, Sir; and I had to make my statement on the basis of very meager materials, which I had in my own possession.

Q. [Handing book to witness]—Now, Sir, if you will refresh your recollection by looking at that last clause of the preliminary statement? A. Yes, Sir.

Q. Now, Sir, upon looking at that will you tell me when the papers, or copies of papers, that you there refer to, did come into your hands? A. Will you allow me to read this sentence?

Mr. Evarts—Yes, Sir, that sentence. This is part of my sworn statement: “I will add that the original documents referred to in the ensuing sworn statement are, for the most part, in my possession, but that the apology and a few other papers are in the hands of Francis D. Moulton.” The original documents which I introduced into my sworn statement were, for the most part, Mrs. Tilton’s letters and mine.

Mr. Evarts—Well, no matter what they were.

Judge Neilson—I think he has a right to say what they were.

Mr. Beach [to Mr. Evarts]—When you produced that and referred to the evidence, he has a right to refer to the other.

Mr. Evarts—Now, whatever papers you there refer to, how long had they been in your possession? A. Ever since they were enacted—years.

Q. Of course your wife’s letters and your own, we assume they had been. A. Yes, Sir.

Q. Now, had you not, when you were preparing your statement for the Committee, received from Mr. Moulton any statement or copies of papers which, up to that time, you had not in your possession? A. No, Sir, Mr. Moulton was—

Mr. Evarts—Very well, that is so.

The Witness—Close as an oyster; he denied me every scrap. That is the reason my sworn statement is so meager, and contained some errors.

Q. No matter about your sworn statement. The fact is that, between the time of publishing the Bacon Letter and the time you made your sworn statement, you had not received from Mr. Moulton either documents in his possession or copies of documents in his possession that you did not have, and took during the course of the transactions themselves? A. No, Sir; Mr. Moulton—

Mr. Evarts—Well?

The Witness—Very angrily refused me any such assistance.

Mr. Evarts—Well, that emphasizes it; that is all. [To Judge Neilson:] Now, if you please, it is our hour for taking a recess.

Judge Neilson [To the Jury]: Jurors will return at two o’clock, gentlemen.

Mr. Mallison—The Court will now take a recess until two o’clock.

#### FRAGMENTS OF THE TRUE STORY PRODUCED.

The Court met at 2 p. m., pursuant to adjournment, and Mr. Tilton’s cross examination was resumed.

Mr. Evarts—[To plaintiff’s counsel.] Have you those papers?

Mr. Beach—Yes, the witness has them.

The Witness—There they are, Mr. Evarts. [Handing Mr. Evarts the papers.]

Mr. Evarts—Mr. Tilton, these papers now produced by you—are they parts of the draft or of the completed copy? A. The completed copy, Sir.

Q. But there seem to be blanks in them? A. Seem to be what?

Q. Blanks. A. Yes, Sir; a space not filled up. I mentioned to you that there were one or two documents that had not been copied in.

Q. This is what you call the completed copy? A. Yes, Sir. You see where it has been stitched together.

Q. Perhaps that is the only blank there is? A. You notice here where the stitching has been?

Q. Yes, I see. I am only asking you whether this is what is called the completed copy, or the draft? A. Yes, Sir. You remember, Sir, that I told you that even the completed copy had never been absolutely completed, so as to suit it for publication.

Q. Yes; I am not questioning the copy, but wish to know which of the two concerns these belong to. A. Yes, Sir.

Q. Now, these are all that you have been able to find, or that you know of being in existence? A. Yes, Sir; that is every scrap.

Q. And there is no copy in any form of any of the rest of it? A. Not that I know of.

Q. That you know of? A. None, in my knowledge.

#### THE FRAGMENTS READ.

Q. Mr. Tilton, please listen to what I shall now read you and say if you recognize it as the commencement of this “True Story”: “One day last month, when I was in the north of New-Hampshire, a scandalous publication burst like a cloud over my home in Brooklyn, and shed a sudden shadow on my wife’s good name.” Do you remember that as the first sentence of your “True Story”? A. I don’t remember that distinct phraseology. My recollection is that it was something like that. I cannot positively swear that that is the accurate sentence.

Q. “A week afterwards, when I returned and first saw the libel, I wrote a card denouncing the outrage, but acting on the advice—” (There is a blank in this, and that I cannot fill.) “withheld it from the press and maintained a contemptuous silence.” Do you remember that? A. No, Sir; I could not swear that that was a sentence of it.

Q. Well, do you recognize that as in substance what it was? A. Well, perhaps I might say in substance.

Q. “Moreover, no form of card that I could devise, though I drafted two or three, seemed an adequate answer to the circumstantial details of the calumnious indictment.” Do you recognize that? A. That may have been correct, Sir.

Q. “Instead of a card, I then proposed an explanatory narrative, meeting the false heads point by point, but this also I was advised against, particularly by Mrs. Tilton, who from the beginning begged me to publish no vindication of her whatever.” A. Something of that sort.

Q. “The ingenious and plausible statement put forth against



her could be thoroughly refuted only by a plain recital of the true story to contradict the false one, and as the true story involves a disagreeable reference to other names, some of which have not hitherto been mentioned in the case, she prefers to suffer obloquy herself, rather than fling it off to fall as a stain upon others, and withholds from me her permission to unvail the whole facts." A. I cannot swear as to the accuracy of that, Sir. It was something in that vein.

Q. "But even against her will I am going to put them in writing, not, however, for the use of the public, but only of a few personal friends. I do this for two distinct purposes: first, for her sake, because a constrained silence will permanently injure her reputation; and next, for my sake, because I owe to these friends a frank explanation of what they have deemed erratic in my public course for the last two years, or since my retirement from *The Independent* and *The Brooklyn Union*." Do you recognize that as a part of your statement? A. No. Sir; I don't remember it; but if you say it is, it is.

Q. Oh, I don't; I, don't say so. A. It was something in that spirit.

Q. In that spirit? A. Yes, Sir.

Q. "About ten or eleven years ago Henry C. Bowen, for whom I was then working as a subordinate in *The Independent* office, told me one evening while crossing the Fulton Ferry that Henry Ward Beecher was guilty of adultery, a practice begun in Indianapolis and continued in Brooklyn." Do you remember that? A. I don't remember that as part of the statement. I remember Mr. Bowen telling me that.

Q. You recognize this as in accordance with the fact, if you had stated it? A. Yes, Sir.

Q. "Between the years 1860 and 1870, Mr. Bowen repeated the accusation not less than a hundred times, frequently exhibiting the deep sense of a personal injury, and sometimes saying that if he were so minded he could drive Mr. Beecher from his pulpit?" A. I guess that is correct, Sir.

Q. Do you recognize that? A. I do not remember the phraseology, but that is in substance correct.

Q. "During part of this time?" I am only asking you whether it constituted a part of your statement, you know? A. Well, Sir, I simply say, in answer to that, that I cannot remember—

Q. The words? A. The words or the phraseology of a statement written so long ago? I should not like to swear that that identical expression was in the statement; still, as you read it, the narration revives to me with some distinctness.

Q. "During part of this time Mr. Beecher was editor in charge of *The Independent*, and I was his lieutenant. Afterward he retired, and I succeeded to the chair. Both before Mr. Beecher's retirement, and afterwards, Mr. B. was in the habit of saying that the pastor of Plymouth Church was a dangerous visitor among the females of his congregation." Do you remember that as a part of your statement? A. I do not distinctly remember it as a part of my statement. I very distinctly remember it as a part of Mr. Bowen's statements.

Q. "This gossip I always heard with unwilling ears, having no more taste for scandal then than now, and I would not note it here except that it is one of the pivots on which the ensuing

history turns." Do you recognize that sentence? A. No. Sir; I do not remember that sentence.

Q. How? A. I do not remember that sentence. I do not remember accurately enough to swear to it, Mr. Evarts.

Q. But does it strike you— A. If you will put that entire document into my possession, and let me read it from beginning to end, I think I could tell you whether it was an accurate transcript of that paper or not; but I cannot swear, sentence by sentence, to a paper which was written a long while ago, and which I have not seen for a year or two.

Q. You have a right, of course, to qualify your statements concerning it?

Judge Neilson—It being understood all the time, Mr. Tilton, that the counsel hardly expects you to recollect the very words. Mr. Evarts—No.

Judge Neilson—But the substance, the sentiment, rather than the very words.

Mr. Evarts—You are quite at liberty to qualify your statements of recollection or non-recollection. [Reading:] "As a further statement still more unwillingly opened, yet necessary to an explanation of the subsequent complication of circumstances, I must say that in the Summer of 1870, a few months after I had undertaken, in addition to editing *The Independent*, to edit also *The Brooklyn Union*, Mrs. Elizabeth R. Tilton, my wife, made to me a communication concerning Mr. Beecher, which, to use her own words, lest I should wrong him by using mine, she afterwards noted down in a memorandum as follows: 'Mr. H. W. Beecher—'"

#### THE FRAGMENTS OBJECTED TO.

Mr. Fullerton—Mr. Evarts, let us understand what we are doing before we go any further. We ought to know whether the counsel on the other side have the true statement. If so, it ought to be produced and speak for itself.

Mr. Evarts—I think I am quite in order.

Mr. Fullerton—Well, so am I. I think it is proper for us to ask whether they have got that true statement?

Judge Neilson—Well, what does the counsel say to the request?

Mr. Evarts—At a proper stage of the matter they may ask. At present I think I am quite in order, if your Honor please, in reading to him.

Mr. Fullerton—Well, I don't know what they are reading from.

Mr. Evarts—Nor is it at all material.

Mr. Fullerton—It is not merely for you to know, but it is for me.

Mr. Morris—We may want to read the balance.

Mr. Evarts—Perhaps there won't be a balance.

Mr. Fullerton—That is a novel way of getting in as evidence a statement, if that is what they are doing. I do not understand that they can read paragraph by paragraph in that way and ask if it was a part of the statement.

Judge Neilson—They ought not to, if they have a correct copy. If they have not I think they can read this.

A HINT THAT THE TRUE STORY WAS PRESERVED.

Mr. Fullerton—They may have the original for ought we know.

Mr. Evarts—Oh, no, scarcely.

Mr. Fullerton—You may have a correct copy, then.

Mr. Evarts—Ah! it is possible.

Judge Neilson—If they have a correct copy they might produce it.

Mr. Fullerton—Certainly, that is what we propose. We have no objection to their offering the copy in evidence if they have it, and if they have it I think that good faith requires that they should announce it, so that we understand exactly what we are doing.

Mr. Evarts—It may be very proper at some stage of the trial to raise some of these questions, but I take it I am quite in order in asking these questions.

Mr. Fullerton—No; I think not.

Mr. Beach—Well, we will see. The objection, Sir, assumes this form, that they are now giving secondary evidence of an instrument the loss of which they have not proven. There is no evidence but what the original exists in their possession, or in the possession of some person over whom they have apparently absolute control, and until they prove the loss of the instrument they cannot resort to this mode of proving it.

Judge Neilson—Has it been traced into their possession?

Mr. Evarts—No, Sir.

Judge Neilson—It has not been traced to their possession?

Mr. Beach—It has been traced to the possession of Mrs. Tilton.

Judge Neilson—By whom it was destroyed?

Mr. Beach—By whom this witness was informed that it was destroyed, but it turns out that a portion of it was afterwards found by this witness, after Mrs. Tilton left his house. Now, whether or not she has the possession of the other portion of this original document does not appear.

Judge Neilson—She might have it and it could not be got.

Mr. Beach—Very well, that they do not show. They have given no proof of the loss by tracing it from the hands of the person into whose custody it was originally put. Another proposition, Sir, that if the original instrument is lost there is a copy of it—an authentic copy of it, the possession of which they do not disclaim, that is the best secondary evidence of the contents. Now, my objection is, Sir, that without any of this proof giving them license to introduce secondary evidence, the course now pursued by the counsel is improper.

Judge Neilson—I think, in view of the circumstance that the paper was in the hands of Mrs. Tilton, and understood to have been destroyed, but a small portion of it finally found—only a portion of it—this witness, ignorant of the existence of any more, he may take this course, but I at the same time think that counsel might well be interrogated and might well answer frankly whether he has got a correct copy or not.

Mr. Beach—Well, Sir, ought they not to show, before they are permitted to give secondary evidence of the contents of this document, that they have at least applied to the party in whose possession it was? It does not follow, Sir, because Mrs. Tilton may have told her husband that it was de-

stroyed, or because he understood that it was destroyed, that that was actually the fact. They show no application made to the party in whose custody the instrument was when this witness had the last knowledge of it. Now, I think, Sir, that your Honor should require at least that we should have proof of an application to that source of information in regard to the existence of the original document. And if it should appear that they have made that application and were unable to obtain it, why, it might be a satisfactory answer to the rule; but without that, I submit to your Honor that we have no adequate or sufficient proof of the loss, nor any search made for it, that would justify the introduction of secondary evidence.

Judge Neilson—I should feel the force of that much more strongly if the witness had not found and produced this fragment of it, but finding and producing a fragment of it helps the suggestion that the rest may be destroyed.

Mr. Fullerton—Yes, your Honor, but they are not reading from the fragment; they are not using the fragment, they are using something else, which presupposes that something else in the shape of a copy or original exists. That is the difficulty about it.

Judge Neilson—I don't know but you ought to use this method. I think we will go on, gentlemen. Take an exception.

MORE QUOTATIONS FROM THE TRUE STORY.

Mr. Evarts—Now, I must begin again.

Judge Neilson—Don't commence at the commencement.

Mr. Evarts—No; but this sentence that I was reading: "As a further statement still more unwillingly opened, yet necessary to an explanation—" A. "Still more unwillingly" what, Sir?

Q. "Opened"—"as a further statement still more unwillingly opened." A. I don't understand that.

Q. "Yet necessary to an explanation of the subsequent complication of circumstances, I must say that in the Summer of 1870, a few months after I had undertaken, in addition to editing *The Independent*, to edit also *The Brooklyn Union*. Mrs. Elizabeth R. Tilton, my wife, made to me a communication concerning Mr. Beecher which, to use her own words, lest I should wrong him by using mine, she afterwards noted down in a memorandum, as follows:"— A. Now, Mr. Evarts, if you will let me interrupt you.

Q. Well, I will not. A. The document that comes there is the document in evidence, and I can tell by holding the original document, whether you are reading what follows correctly.

Q. I will not be interrupted, Sir.

Mr. Beach—Well, you have been.

Mr. Evarts—[Reading]: "Mr. H. W. Beecher, my friend and pastor."

The Witness—Will you hand me that?

Mr. Fullerton—No! Just one moment! You don't want to look at anything. We will regulate it.

Mr. Evarts [Reading]: "'Mr. H. W. Beecher, my friend and pastor, solicited me to be a wife to him, together with all that this implies.' I borrow the above fact from my wife's hand-



writing, and forbid myself from pausing at this point either to blacken it with epithet or to lighten it with any explanation." Do you recognize that statement as being a part of your "True Story"? A. I should strike out the word—

Mr. Fullerton—One moment, now! Do you recognize it as a part of the "True Story"? That is the question—as it is read.

Mr. Evarts—Now, will you go on and answer; you would strike out what?

Mr. Fullerton—No, I object.

Mr. Evarts—It is a cross-examination.

Mr. Fullerton—I know it is a cross-examination, but I want the question answered correctly.

Mr. Evarts—I never heard that counsel could stop a witness on a cross-examination in that way.

Mr. Fullerton—You have often done it, Sir, in this trial.

Judge Neilson—I think counsel could stop a witness if the witness were departing from what he thought to be an answer to the question put by his opponent.

Mr. Fullerton—It admits of yes or no, and I want an answer.

Mr. Evarts—Ah! ah! Now, does your Honor understand that when I am cross-examining the witness, counsel on his part have a right to object that he must answer yes or no?

Judge Neilson—I think the counsel can make suggestions to that effect.

Mr. Evarts—I agree, but are they proper suggestions; do they stop the witness's mouth?

Judge Neilson—Then again it is not quite worth while to emphasize the fact that it is a cross-examination. This is a new matter brought out by you.

Mr. Evarts—Well, Sir; we will not dispute about that.

Judge Neilson—Now, I think the witness could answer yes or no, whether he does recognize it or does not. If any explanations afterwards are called for of course he can make them.

Mr. Evarts—Does your Honor instruct the witness that he must?

Judge Neilson—I instruct him that he should.

#### MR. TILTON JEALOUS OF HIS ENGLISH.

Mr. Evarts—I mean that he should. Will your Honor be so good as to note my exception to that instruction? [To the Witness]: Now, Mr. Witness, A. I think I should say, Sir, that the substance of that was mine, but I think that if you have copied it from the original, there are two words incorrectly copied.

Q. What are those? A. One is the word "opened," and the other "any."

Q. What should the word "opened" be, do you think? A. I don't know, but it seems to me to have no sense there.

Q. And the word "any" in what connection? A. It spoils the antithesis. Read it.

Q. The very last sentence? A. Yes, Sir. Read it?

Mr. Evarts—[Reading]: "I borrow the above fact from my wife's handwriting, and forbid myself from pausing at this point, either to blacken it with epithet or to lighten it with any explanation." A. "Blacken it with epithet or lighten it with explanation."

Judge Neilson—In other words, that is the way you think you would have written it?

The Witness—Yes, Sir, I think so; but your Honor will understand I cannot swear that I wrote it as it stands there; but I certainly do not think I wrote it as you have read.

Mr. Evarts [Reading]: "The subject of my wife's recital was communicated a few weeks afterwards by me to O. J. and F. D. M., and by my wife to her mother, and thence to some relatives. Mr. Beecher was absent from the State at the time, it being his vacation." Do you hear that? A. I do not remember the initials.

Q. How? A. I did not write it in initials. I wrote the names in full if I wrote it at all. I didn't do it in that blind way.

Q. Well, otherwise than that? A. I cannot swear positively.

Q. "During the Summer and Fall of the year 1870, I spoke of the case to a few friends, exhibiting more anger than charity towards Mr. Beecher, though to Mr. Bowen, whose two papers I was then editing, I was silent and unwilling to add any fuel to his indignation against the man whom he seemed preparing to destroy." Do you remember that?

Mr. Fullerton—I object to that, Sir. That, I take it, is a leading question, and it is evidence in chief of the other side; it is not cross-examination.

Judge Neilson—Well, your inquiry in the sense of it is, whether he recognizes that as a part of what he wrote.

Mr. Evarts—Yes, Sir.

Mr. Fullerton—Yes, Sir, and it admits of yes or no. It is a leading question if a leading question can be formed.

Judge Neilson—He is obliged to ask a question in that leading form somewhat, in order to get at the fact.

Mr. Fullerton—Ah! Sir, but if they have got a copy they can hand it to him and ask him the direct question.

Judge Neilson—Well, take an exception.

Mr. Evarts—My learned friend does not propose as a rule of examination that a cross-examination cannot lead?

Judge Neilson—I have ruled on this.

Mr. Evarts—You can lead a hostile witness even in a direct examination.

Mr. Fullerton—I hold you cannot get a copy of a paper in evidence in that way.

#### MRS. MORSE'S INFIRMITIES DESCRIBED.

Mr. Evarts. Ah! [Reading]:

"My wife's mother now began to play an important part in my relations to Mr. Bowen and Mr. Beecher, and in the relations of these two persons to each other. This lady has been for years a chronic subject of manias and frenzies, and notoriously irresponsible in her tirades on any subject that excites her morbid feeling. One of her physicians, the late Dr. Barker, of Brooklyn, recommended several years ago that she be treated to an—"in," it seems to be—"an institution for the insane."

A. What is that, Sir?

Q. "One of her physicians, the late Dr. Barker of Brooklyn, recommended several years ago that she be treated in an institution for the insane?" A. Oh, "in." I thought you said "to."

Q. "Among her eccentricities which I allude to, not to reprobate their author, whom disease may largely exempt from censure, she attempted, about that time, to take the life of her husband, the Hon. N. B. Morse, by clutching his throat and strangling him with such powerful energy that her grasp was loosened with difficulty by the inmates of the house, and her fury quenched with chloroform, a circumstance speedily followed by a legal separation between her husband and herself."

A. Is that "cutting his throat?"

Q. "Clutching." A. Oh! "clutching;" yes, Sir.

Q. Do you recognize that as a part? A. I do not remember the exact statement. I know the facts to which the paragraph points.

Q. But was that subject included in your— A. I think, Sir, that there was a very sharp statement of Mrs. Morse's troubles and mine included in the statement, but I don't know whether that is one or not.

Q. "In a less degree she had used violence towards other members connected with her by blood or marriage, and had frequently written letters to me threatening my life;" do you recognize that? A. I don't remember that statement. I remember the fact of her writing such letters, threatening my life.

Q. "In a less degree she had used violence toward other persons connected with her by blood or marriage, and had frequently written letters to me, threatening my life—" Do you recognize that? A. I do not remember that statement; I remember the fact of her writing such letters, threatening my life.

Q. "Her ingenuity of statement against her relatives during the spasms of her insane hysterics is cunning and malicious in the extreme. At the same time, in saying this, I bear testimony to the innate kindness and beautiful affection of her nature. By those who knew her well, her peculiarities are understood; but, to her casual acquaintances, they generally remain successfully hidden in the—" There is a blank here—a single word, I suppose. "—demeanor of one of the most peaceable and fascinating persons."

Q. Do you remember that as part of your true story? A. No, Sir; but, if that blank was supplied, I think it would be a very accurate statement of the lady's character and habits.

#### TROUBLE ABOUT IDENTIFYING THE STORY PIECE—MEAL.

Q. "The unhappiness which she has occasioned to every member of my own family had increased year by year, until, at last, Mrs. Tilton and I had been compelled to forbid her to enter our house—" Do you remember that? A. I do not remember it as part of the statement; no, Sir. If your Honor will instruct me in regard to these answers; I am constantly recalling to myself that I am under oath, and I wish that my answers may be consistent with the solemnity of that oath. Here a series of sentences are brought up before me, and I am asked to swear whether or not two or three years ago I wrote such and such sentences. I am unable to say positively that I did; it would be very easy to put an incorrect sentence before me and make me think, for the time, that it was part of a document which I wrote—I do not wish unwittingly to swear

to a wrong; and I now again—I was about to say, I request (perhaps I have no right to make a request)—at the same time I will state that if that document be put into my hands, so that I can read it from beginning to end, I think I should have no difficulty in identifying it as the document alluded to; identifying it as a whole.

Judge Neilson—If it be the document.

The Witness—If it be the document?

Mr. Fullerton—And that is what we think ought to be done.

Judge Neilson—Mr. Tilton, as the counsel read a sentence to you, if you recollect it, or recognize it, as portion of what you wrote, you will so answer; if you do not, you will answer that you don't. If, in substance, it seems to be what you wrote, though it may not be in the very words, you will answer that way; but in no instance recall what was stated to you outside, either by Mr. Moulton or Mrs. Morse. The question all the time to you is whether, according to your present recollection, you recognize what is read as part of what you wrote; that is the only suggestion.

The Witness—I will ask your Honor one further instruction: if I answer, sentence by sentence, "It was something like that," without saying, "It was exactly that?"

Judge Neilson—Well, you have a right to do that—have that privilege; or, in substance—or, if you do not recognize it.

Mr. Beach—There is no occasion for the witness saying whether or not the statement as read to him was the fact or not.

Judge Neilson—No; that I suggest to him.

Mr. Beach—That is wandering from the question entirely.

Mr. Evarts—That is so; my inquiry is only as to its being a part of his statement.

Judge Neilson—Will you take the original when you come down to it? Will you take the original part when you come down to it?

Mr. Evarts—Oh, I dare say I shall—I can't find there is anything in it.

Mr. Beach—Where is the original?

Judge Neilson—All the time you understand that we might have received this—if you had an opportunity to read the paper at large deliberately.

The Witness—Your Honor will please understand that all the precaution I desire to take is not to be run into taking a false oath concerning a technicality difficult of remembrance.

Judge Neilson—Yes, Sir.

Mr. Evarts—I think I left off the clause, Mr. Tilton, which spoke of the fact—which says—"until, at last, Mrs. Tilton and I had been compelled to forbid her to enter our house—"

Do you remember whether what I now read was a part of your statement? A. I cannot say, Sir, with sufficient accuracy to swear to it.

Q. "As illustrations of the mischief which Mrs. Morse had wrought against us, she spoke of Mrs. Tilton two years ago to our oldest daughter, Miss Florence Tilton (then thirteen years o'd), in terms of crimination revolting to any pure girl's mind, and most terrible when spoken to such a girl against her own mother, being nothing less than the central accusation in the great scandal, which another mad woman afterwards published to the world."



Q. Do you remember that as a part of your statement? A. I do not remember the phraseology, Sir.

Q. "Mrs. Morse once went to a lawyer in Brooklyn, and with a plausible air consulted him about a divorce between my wife and me—a fact which we learned only by accident not until it had spread its bat's-wings and gone flying abroad?" A. I think that was in it, Sir.

Q. Yes. "She wrote to sundry journalists anonymous letters to prejudice me in their estimation, and I trace to her fertile brain the tale that I once took my wife by the hair of the head and kicked her during illness. But I forbear to narrate a hundred instances which come to my mind of her mischief-making propensities. It is sufficient to say in reference to my case with Mr. Bowen and Mr. Beecher, and to the case of each against the other, that she made a careful and malicious use of the few facts in her possession and of the many fancies which these engendered in her diseased and unhappy mind?" A. I can't swear to the words, Sir.

Q. But in the substance does it strike you as part? A. Well, that passage does not arise to my mind; I won't say that it was not in it.

Q. Very well. "Mrs. Morse, in plotting her insane mischief, chose a confederate for a brief time in Mrs. H. W. B."—Beecher, I suppose—"another lady of abnormal type, whose peculiarities, having less aggravation, are also less pardonable than Mrs. Morse's." A. I think that was in it, Sir, or something like it.

Q. "For eleven years, Mrs. Beecher and I have not been on speaking terms, nor have I ever had so relentless an enemy. Strange it is, the cause of the hostility was an act of kindness which I performed for one of her children, an act for which her husband has never ceased to speak gratefully, and which he commemorated at the time, by sending me a beautiful gift in bronze. She never spoke to me afterwards." Do you recognize that? A. Something like it was in the statement.

Q. "To the readers of these manuscript pages, which are chiefly for Brooklyn use, she needs no description here." A. I think that was there, Sir.

#### THE WEBSTER DIFFICULTY WITH MR. BEECHER.

Q. "In the Fall of 1870, Mr. Bowen urged me to support, in *The Union*, Mr. E. D. Webster for Congress, a Republican nomination which many of the best citizens of that party had publicly repudiated, against one a meeting at the Academy had made, Judge George Reynolds being the chief speaker." Do you remember of there being anything about that Webster matter in the— A. No; I don't remember that.

Mr. Evarts—Well, I will read it.

The Witness—Moreover, Sir; I am very sure that in speaking of Judge Reynolds, I should have given him his full name, George C. Reynolds.

Q. George G. Reynolds, isn't it? A. George G.—

Q. Oh, I dare say. "I declined to support Mr. Webster, though as I knew nothing against him personally, I made no war on his character. Mr. Bowen repeated his plea in Webster's behalf, and I repeated my refusal. Mr. Bowen then

stated there was one way in which *The Brooklyn Union* could be made to support Mr. Webster, and that was by dismissing its editor. I answered: 'Yes; but that is the only way.' This was the first instance, in all my relations with Mr. Bowen, covering fifteen years, in which I had ever known him to attempt to bend the integrity of my mind. Mr. Webster was defeated, and he credited his misfortune to me, and maligns me for it to this day." Do you remember that as part? A. No, Sir; I don't remember any part of that.

Q. Don't remember anything about that. "After this difficulty, Mr. Bowen gave me to understand that as he owned two newspapers, he meant to edit at least one of them; accordingly he chose the lion's share, taking *The Independent* for himself and leaving *The Union* for me." Do you remember that? A. Don't remember that expression. No, Sir,

Q. The sense of it do you remember as being included in your— A. No, I don't bring it up to my mind.

Q. "He said, that he could not reasonably hope for more than ten remaining years of active life, and that if he was to win any fame or position to bequeath to his children, he must do it within that time. So without a murmur, I took off my crown and laid it at his feet, and said 'God save the King!'" Do you remember that? A. No, but it sounds just like me. I think I must have said it, [Laughter.]

Q. "We never made a treaty"—

Mr. Beach—"We then made."

Mr. Evarts—"We then made a treaty, and two contracts were drawn up between us, by which Mr. Bowen was to be editor-in-chief of *The Independent*, as I had been, and I its leading special contributor, as Mr. Beecher had been in the days of the *Star Papers*." Do you recognize that? A. I don't recollect the expression.

Q. But the sense of it? A. I don't remember that any such statement was in my story. Of course I don't say that it was not there, Mr. Evarts.

Q. No; that I understand, of course. Do you remember whether any statement about your business affairs was in the statement? A. Oh, yes, Sir.

Mr. Evarts—Very well.

The Witness—I tried to make that statement very ingeniously.

Q. Yes. "This arrangement to last two years at \$5,000 a year. Furthermore, I was to be also the editor-in-chief of *The Union*, giving up my lectures, an arrangement to last five years at \$5,000, together with ten per cent. of the net profits, which promised to be \$5,000 more, making all told, my yearly income \$15,000. Do you remember that as a part of your statement; your True Story? A. I think there was something like that in the statement, but I am very sure that I should have said, not \$5,000, because it was \$5,200 in each of these two cases. The probability is that I would have been absolutely accurate; both salaries were \$100 a week.

MR. TILTON'S GIFT TO MR. JOHNSON AND MR. BOWEN'S TO MR. TILTON.

Q. "When these negotiations were accomplished, I stated them, or notified them privately to Oliver Johnson, my assistant on *The Independent*, and sent him my gold watch as a parting tribute to the faithfulness with which he had toiled at my side, and to the love which I cherished for the man." Do you remember that as being in your statement? A. I remember making an allusion of that kind to Mr. Johnson. I don't remember the—

Q. Words? A. "Stated" or "noticed;" what is that sentence, please read it again.

Mr. Evarts—Well, the word is "stated" or "noticed."

Mr. Beach—It could not have been "noticed."

Mr. Evarts—Well, I say I do the best, I can. The proper English word would be "communicate."

Mr. Beach—"Stated" is just as good English.

Mr. Evarts—Yes. "In answer to this token, there came the following fragrant, precious letter from his pen"—which letter I haven't here.

The Witness—Please read it, Mr. Evarts.

Mr. Evarts—I haven't the letter.

The Witness—I will furnish you the original. Will you do me the favor to read it?

Q. It is still in your possession? A. Yes, Sir.

Q. "In addition to the above letter, which is the chief letter, merely, I now cherish of long editorship of *The Independent* —,"

The Witness—What is that, Sir?

Mr. Evarts—Well, it is a little blind; I will read it, however, the best I can.

Mr. Beach—It is elliptical; it is not complete.

Mr. Evarts—Yes. "I received from Mr. Bowen a gift of a gold watch, to replace the one I had given away."

The Witness—Yes, Sir. That is the watch. [Taking his watch from his pocket.]

Q. That happened? A. Yes, Sir; I know it.

Q. You still have it? A. That is it, Sir; that must be true.

Q. "Then under date of December 22d, 1870, *The Independent* contained the following valedictory and response."

The Witness—Under date of what?

Q. Under date of December 22d, 1870? A. Yes, Sir.

Q. "The *Independent* contained the following valedictory and response?" A. Yes, Sir.

Q. Those are not here, but those are printed papers? A. Yes, Sir.

Mr. Beach—Not in.

Mr. Evarts—Not in this paper that I have.

Mr. Beach—And not in evidence yet.

The Witness—You will do me the favor to read them when I present them, will you, Sir?

Mr. Evarts—Oh, yes. I am willing they should be read. "Two days later, namely, Saturday, December 24th, Mr. Johnson mentioned to me that some strange tales concerning me had been planted like seeds in Mr. Bowen's ears, and that Mr.

Bowen, without specifying them, was annoyed by them." Do you remember that as being in your statement? A. I don't remember that phraseology, Sir.

Q. "Later, on the same day, Mr. Johnson said that Mr. Bowen had received a report that I was about to abscond to Europe to join"—a blank which I will not fill—"who was already there. On the following Monday, December 26th, 1870, in a conversation with Mr. Bowen, Mr. J. being present, a budget of Mrs. Morse's ingenious fiction, together with some other gossip, was referred to and discussed, and Mr. Bowen dismissing the subject, said that as I was to be for five years the editor of *The Brooklyn Union*, he hoped hereafter that I would devote more attention than I had previously done to Plymouth Church." Do you recognize that as part of your statement? A. Something like that. I don't know whether that is correctly stated or not.

Q. "He instanced my not attending service there any more, and begged me to be a constant witness of all the proceedings, with a view to make them topics of remark. I then informed him that I had not been at the church for months past, and should probably no more be seen inside its walls, which opinion I stated to him in a few words in Mr. Johnson's—" "I stated to him in a few words in Mr. Johnson's presence, my wife's communication concerning Mr. Beecher—"

Mr. Beach—Well, that is blind.

The Witness—That is bad English.

Mr. Evarts—Yes, that I understand.

Mr. Beach—It is unintelligible.

Mr. Fullerton—It is a good question, though.

Mr. Evarts—"Occasion," instead of "opinion," "and should probably be no more seen inside its walls, on which occasion I stated to him in a few words, in Mr. Johnson's presence, my wife's communication concerning Mr. Beecher." Do you remember that as a part of your true statement? A. I don't think there was any such bungling sentence as that in it.

Q. Well, aside from the words, the substance of it? A. I think the substance was probably there.

Q. "Mr. Bowen's indignation at Mr. Beecher was extreme. He arose from his chair, talked vehemently, gestured angrily, and said that Mr. Beecher must be made to quit the pulpit. He then reiterated all the charges that he had made many times before, and said, in addition, that Mr. Beecher had, in February, 1870, confessed his adulteries to Mr. Bowen, and implored his forgiveness with tears." Do you remember that as a part of your statement? A. Something like that.

THE CAUSE OF MR. BOWEN'S ENMITY SUGGESTED.

Q. "The interview at which this confession took place I think he said was held at Mr. James Freeland's house?" A. I don't remember that.

Q. "I forgave him," said Mr. Bowen, "but he still goes on with his crimes and criminal attempts just the same as ever. You ought to proceed against him instantly. Don't let him preach another sermon. If I was free to take action as you, I would expel him from his pulpit and he should never write a word again for *The Christian Union*." I then said, "Mr. Bowen, why are you not still more



free than I am?" Do you remember that as a—? A. Something like it.

Q. "Because," said he, 'Mr. Beecher made a confession to me and asked my pardon, which I granted, and I cannot re-open a settled quarrel; but if you will make a charge I will furnish the proof?' A. Something like that.

Q. "At a later period of the conversation, and after Mr. J. had left, Mr. Bowen rose to a still higher heat, brought me pen and ink, and challenged me to write to Mr. Beecher, demanding that he should retire from the pulpit and *The Christian Union*." A. Something like that.

Q. "I will bear a letter to him," said Mr. Bowen, 'and will sustain the demand with proofs. There will be no resistance. Mr. Beecher will not deny, cannot deny, dare not deny them.' A. Something like that.

Q. "Mr. Bowen put his case with such energy, and with such a passionate plea in it that I would enable him, without his breaking his treaty with Mr. Beecher, to reopen his old warfare upon him, and excited within me such a revived remembrance of the wrongs which Mr. Beecher had done to my own heart that I wrote a draft of a note, which I altered and rewrote and left finally changed as follows:

DECEMBER 26th, 1870. }  
BROOKLYN. }

HENRY WARD BEECHER.

Sir: I demand that, for reasons which you explicitly understand, you immediately cease from the ministry of Plymouth Church, and that you quit the city of Brooklyn as a residence.  
(Signed) T. T.

Theodore Tilton? A. No, Sir; it was never signed "T. T.;" it was signed by my whole name.

Q. Yes; we have had it in evidence? A. Yes, Sir; well, I didn't do it in a half way.

Q. This, I believe, agrees with the—"I put the above letter into Mr. Bowen's hands, to be immediately delivered by him in person to Mr. Beecher, and then I went home. During the afternoon Mr. Moulton called on me and I mentioned to him the occurrence of the morning ending with the letter. He called me foolish, 'because,' said he, 'you ought never to have written a letter at all, but if written it ought to have had Mr. Bowen's signature to it as well as your own. You have left him a chance to play you a trick. You have made your demand all alone. What if he leaves you to support it all alone? Mr. Moulton then took a sheet of paper and entered on it the following memorandum: 'Brooklyn, December 26th, 1870. T. T. informed me to-day that he had sent a note to Mr. Beecher, of which Mr. H. C. Bowen was the bearer, demanding that he, Mr. Beecher, should retire from the pulpit and quit the City of Brooklyn. The letter was an open one. H. C. Bowen knew the contents of it, and said that he, Bowen, would sustain T. in the demand.' Do you remember putting that memorandum into your "True Story"?' A. Yes, Sir; I did.

Q. "A day or two afterwards, prompted by my wife's wish and Mrs. M.'s advice, I resolved that I would send for Mr. Beecher to meet me at a personal interview, either in their presence, or with me alone. I dispatched to Mr. Bowen a messenger with a notification of this intention. On the receipt of this intelligence by Mr. Bowen,

which I supposed would gratify him, he came into my editorial chamber, and, with a look of desperation on his countenance such as I had never seen there before, and with an anger and passion of which I had never dreamed him capable, and with the manner more of an insane than of a rational man, began to threaten me that, if in any interview I might have with Mr. Beecher, either then or at any other time, I should divulge to Mr. Beecher what he (Bowen) had said against him, or should intimate that he (Bowen) had any hand in the letter requiring Mr. Beecher to vacate his pulpit, I would be cashiered from *The Independent* and *The Union*, and that the police should be called to cast me into the streets." Do you remember that? A. I cannot swear to the phraseology.

Q. Or the substance? A. Well, yes, in the main, I think; I cannot know all the details; I cannot say how I stated it precisely.

Q. [Reading:] "After some words of indignation which I uttered in reply, Mr. Bowen abruptly retired from the office, leaving me in as great a state of astonishment as I had ever experienced." Is that part of your statement? A. I don't recollect that.

Q. [Reading:] "I informed my wife and Mrs. Moulton, and afterwards Mr. Johnson, of this incident, concerning which Mr. Moulton remarked that it did not surprise him in the least; and then, by the joint advice of all, I determined to summon Mr. Beecher to the contemplated interview." Do you remember that as a part of your statement? A. No, Sir.

Q. [Reading:] "To this end Mrs. T. wrote a brief note, addressed to Mr. Beecher through me, stating that she had given me the disclosure of July 1st, 1870, concerning him, and that her husband would speak to him face to face." Do you remember a statement of that kind? A. I don't remember the phraseology of it.

Q. [Reading:] "On Friday evening, December 30th, I went to Mr. Moulton's house. Mr. Moulton went after Mr. Beecher, and brought him. This was early in the evening, Mr. Beecher leaving his prayer meeting, usual on that evening, to go without his leadership. My interview was with Mr. Beecher alone. I read to him my wife's letter, and said to him what I shall not here repeat. He sat like a statue under my brief remarks, and at the close bowed to me and said, 'This is all a dream.'"

The Witness—I don't remember that.

Q. Don't remember that? A. No, Sir.

Mr. Fullerton—How was that? A. I don't remember the exact phraseology in which it is put there.

Mr. Evarts—[Reading:] "He affected to disbelieve that Mrs. Tilton had written the letter, and denied everything with a royal negative."

The Witness—Yes, I remember putting that in, in order to cloak the statement—make it easy.

Mr. Evarts—Ah! Well, I did not ask you that; my sole question was whether this was in your statement. A. Yes, Sir, it was in—put in there for a purpose.

Mr. Evarts—Well, that will all be left out—the purpose that it was put in for.

The Witness—I remember that being put in.

Mr. Evarts—If your Honor please, I ask that that all be stricken out.

Judge Neilson—The answer is "he remembers it;" very well.

Mr. Evarts—Yes, that is all; the rest must go out.

Mr. Evarts—[Reading:] "I then said, 'it is about a few squares to my house go and ask Mrs. T. for yourself whether or not she wrote the letter'; he went and returned in half an hour." Is that part of your statement? A. I don't remember that.

Q. You don't remember that? [Reading:] "I did not see him. Mr. Moulton asked him what had taken place at Mrs. Tilton's? He remarked that he had seen that lady; but he did nothing more, and left. This was about 11 o'clock at night."

The Witness—I don't remember that.

Q. [Reading:] "Shortly after he left, I left. On reaching home I found that Mrs. Tilton, who was then seriously ill and in bed, was agitated and distressed. She said that Mr. B. had been there, telling her that she had pursued and slain him."

The Witness—Done what, Sir?

Mr. Evarts—"That she had pursued and slain him."

The Witness—I do not remember any such expression as "pursued;" there must be some mistake there.

Mr. Evarts—"That he would be tried by a counsel of ministers and his career ended, and that he was a dead man unless she would save him from his fate. She said, moreover, that, after talking to her in this strain, and exhibiting great and terrible feeling, Mr. B. went to her writing desk, and taking out pen and paper, brought them to her bedside, and putting them into her nervous hands, dictated to her, what she copied—a paper of which she could not recall the phraseology." Was that in your statement? A. Something like that, I think.

Q. Something like that? But I should have added, "could not recall the phraseology, nor, to a certainty, the substance and meaning," which completes the sentence. It was at the foot of the other page. [Reading:] "Shortly after narrating to me the above occurrence she resumed her pen and ink and wrote the following statement." That is the statement that is in evidence here?

The Witness—Yes, Sir.

Q. But is not on this paper. [Reads again:] "The next morning, in response to a note from me, Mr. Moulton came to my house, and, after an interview with my wife, received from her, in writing, a request to procure the return of the paper which, in her agitation, she had given to Mr. B. the night before—a paper all the more important for, as it is seen, she was uncertain of its real design."

The Witness—I don't remember that.

Mr. Evarts—[Reading:] "That evening, which was Saturday, brought to me a new surprise, closing a week of sensations with one which fittingly capped the climax, namely, a notification from Mr. Bowen that my engagements with *The Independent* and with *The Union* would then and there terminate, and that he was ready to settle with me in full of all demands." Do you remember that being in your statement? A. I do not remember.

Q. Well, was the substance? A. I do not remember that.

Q. "In these words Mr. Bowen broke his two contracts which he had just made with me, which were also"—

The Witness—There is something wrong there.

Mr. Evarts—"And which were also then a week old," it is so here, "and to each of which was attached a provision that it could be terminated by death or by six months' notice, or immediately on paying a forfeit of \$2,500, but in no other way."

The Witness—Please read that phrase, "in these words." What does that mean?

Mr. Evarts—"In these words, Mr. Bowen broke his two contracts which he had just made with me."

The Witness—Well, in what words?

Mr. Evarts—Well, that I have just read.

Mr. Fullerton—Never mind, Mr. Tilton, let them read their own paper in their own way.

Mr. Evarts—The witness has a right to his explanation.

Mr. Fullerton—So have I a right to say to him what I do.

The Witness—I think that must have been "in other words."

Judge Neilson—"In these words" refers to what immediately preceded, if it refers to anything.

The Witness—But no words were quoted from Mr. Bowen.

Mr. Evarts—Well, it is immaterial. You think it should be "in other words."

The Witness—Well, I merely want to know what I have got to swear to, that is all.

Mr. Fullerton—Well, you have not got to swear to anything but what he reads as a part of your statement; if it is not, you will say so.

Mr. Evarts—And in what respect it is.

Mr. Beach—He is not obliged to answer in that way.

Mr. Evarts—No.

Judge Neilson—He does not suggest that it should be "other words."

Mr. Evarts—He doesn't? I thought I understood him to say so.

The Witness—I simply thought it might be so.

Mr. Evarts—Yes; it came from him, Sir.

Judge Neilson—As better English—better sense?

The Witness—That is all.

Judge Neilson—Not as being in that paper?

The Witness—No, Sir; I don't remember any such important sentence as that.

Mr. Evarts—I did not make the sentence.

Judge Neilson—That is true. It was his criticism.

Mr. Evarts—I will read it either way. [Reading:] "In these words Mr. Bowen broke these two contracts which he had just made with me, and which were also then a week old, and to each of which was attached a provision that it could be terminated by death, or by six months' notice, or immediately on paying a forfeit of \$2,500; but in no other way."

Q. Do you remember a statement concerning the contracts in your paper? A. I do not remember distinctly—no, Sir.

Q. [Reading:] "Mr. Bowen thus suddenly laid himself liable to pay \$5,000, for breaking his two contracts together, of course, with 10 per cent. of *The*



Union's profits, due to me up to date, from May 1st to December 31st—eight months."

The Witness—I do not remember.

Q. Don't remember that being in the statement? A. No, Sir.

Q. [Reading]: "I received this notification late in the evening of the last day of the year, after which I first informed my wife, and bidding her not to be troubled, then sought Mr. Moulton's house; I invited him out of doors, and paced with him the wintry streets, till the chimes of St. Ann's rung out the old and rung in the new year." Do you remember that being in the statement? A. I remember the chimes; I think there must be some sentence left out there.

Mr. Evarts—Well, none that I am aware of.

The Witness—Still, I don't know; I don't know whether I put the whole Saturday night in or not; perhaps only a part of it.

Q. [Reading]: "The next day I furnished a New Year's gift for Mr. Bowen in the shape of the following letter." That refers to the letter of January 1st? A. Yes, Sir.

Q. [Reading]: "After writing the above letter, I gave it to Mr. Moulton to be by him delivered to Mr. Bowen; and as I wished speedily to settle my affairs with my late employer, I asked Mr. Moulton to be one of three arbitrators for the purpose. Mr. Moulton desired me to commit the whole case to his hands, lest in the hands of myself I should be tempted to do injury to Mr. Beecher. I consented to write the following"—which is the authority.

The Witness—Well, that is badly bungled, Sir. I don't think I wrote it in that way.

Q. You don't remember about that?

Mr. Morris—He doesn't mean by that to say that he doesn't remember any authority.

Mr. Evarts—Oh, no. [To the witness]: Do you remember whether the authority was put into the "True Story"? A. My authorization, do you mean?

Mr. Evarts—Yes; was it included in that paper? A. I don't remember, Sir; but I think quite likely it was.

Q. "On the night of January 1st, 1871, Mr. Moulton called on Mr. Beecher, and after a protracted interview returned, and immediately gave to me an account of the interview, which I took down from his lips in phonographic notes; these notes, after two years, I now reopen for the first time and digest therefrom the following report."

The Witness—"Reopen?"

Q. Yes, Sir. A. Strange word.

Q. "These notes, after two years I now reopen for the first time, and digest therefrom the following report." A. I don't understand that word "reopen."

Q. Well, it is not for me to suggest, except that they might be closed up in an envelope or shut up in a drawer? A. Well, perhaps they were; yes, Sir.

Q. Well, what do you think of that; do you think that was in your statement? A. I don't remember the phrase; I remember that I took from Mr. Moulton's lips the narrative.

Mr. Beach—Well, you are stating now as to the fact, and not as to the contents of this statement.

The Witness—And afterwards used a part of the narrative, and put a fragme it into the statement.

Mr. Evarts—The question is only whether this was in your "True Story" as you composed it? A. Well, it is very difficult for me to swear exactly what was in and what was not. I have to go by the facts themselves rather than by the mere statement of them.

Mr. Beach—That is the only safe way.

Mr. Evarts—Well, I proceed to read them: "I called at Mr. Beecher's. He was not at home. I left my card; presently his son came running after me saying his mother knew where his father was, and that he would go for him; I went back to the house and Mr. Beecher came in; he invited me up stairs; I told him he would probably consider it the strangest interview he ever had with mortal man. Said I: 'Mr. Beecher, I wish to tell you first how minutely I recollect your conversation of last evening. I came to tell you as a friend meaning to do you as good service as ever any friend did to another. On our way to my house I asked you if any one had seen the letter besides yourself, the letter of T. T. demanding your retirement from the pulpit; you said none save one, besides myself. I asked if that one was H. C. B. You made no reply. You recollect it, do you not?' He said, 'I do.' 'I do not press any answer from you now; so far as you do not answer me you do not respond to the friendship which I profess for you.'" Do you remember that part of your statement? A. I remember there was something like that; I don't know whether that is accurate or not.

Mr. Evarts—Now, if your Honor please, I am sorry to say that that is all I have of the True Statement—the "True Story" in any form.

Mr. Fullerton—I am sorry to say that it does not appear to be, in part, the "True Statement."

The Court—How is it as to the portion preserved?

Mr. Beach—That is not all that you have. You have these three or four pages.

Mr. Evarts—Well, I say all that I have of my own source.

#### MR. TILTON'S DEFENSE IN THE TRUE STORY.

Mr. Evarts—I will now read from this paper.

[Taking up the preserved sheets.]

Mr. Beach—What are you reading from?

Mr. Evarts—I am reading from the original paper produced by Mr. Tilton. "Mrs. Davis, in *The Springfield Republican*, December 9th, 1872"—

The Witness—It was put into my hands at the time; I don't know whether it was from *The Springfield Republican* or not.

Mr. Evarts—[To the witness.] This printed paper was put into your hands—this statement?

The Witness—Certainly.

Mr. Evarts [reading]:

A WITNESS WHO REPUDIATES.

"Mrs. Paulina Wright Davis, of Providence, was given as a chief witness in Mrs. Woodhull's scandalous Beecher-Tilton

libel. But in a note just received from her in Europe, Mrs. Davis thus utterly repudiates, in gross and in detail, the statements concerning her relation to the case, and gives the most damaging direct blow to the whole libel that has yet been rendered": [This appears to be quoted.] "In relation to the Tilton versus Beecher affair, I have only this to say: I was never on any terms of intimacy with the families of either party; I never visited at Mr. Tilton's but once in my life, and that was ten years ago, in company with Mr. and Mrs. Johnson. A year or two ago I called at Mr. Tilton's house for some books which I had lent to Mr. T. I then saw Mrs. Tilton for ten or fifteen minutes. I have met Mrs. Tilton two or three times at the houses of mutual friends; but at no time has there been the slightest approach to a confidential conversation between us, nor have I insinuated that there had been. If Mrs. T. has ever in my presence spoken of Mr. Beecher, it has been in terms of respect, as a man of honor and her pastor. I did believe that Mrs. Woodhull was going to do a great work for woman; I am grieved that she has failed in what she gave promise of doing."

[Reading from the "True Story:"] "I have not seen the original manuscript of Mrs. Davis's letter, as above printed, nor do I know to whom it was addressed; but a similar letter was sent by her from Paris to Oliver Johnson, which I have seen and here transcribe as follows:" That does not seem to be transcribed?

The Witness—No, Sir; Mr. Johnson showed me the letter, but I failed at the time to take a copy of it, and afterwards I did not get the copy.

Mr. Evarts—He, perhaps, has it. [Reading:] Mrs. Stanton, in a letter to a friend in New-York, dated Boston, November 5th, 1872 (a few days after the Woodhull publication appeared), says:

[MRS. STANTON'S STATEMENT.]

"I have had a grand time visiting friends here, but my pleasure has been fearfully marred by this Woodhull paper. I thought it dead. 'False in one point, false in all,' is a good old Latin motto. The filthy words—" [Pausing.]

The Witness—I will read it for you if you wish, Mr. Evarts.

Mr. Evarts—"The filthy words—language," I think it is.

The Witness—I guess it must be a mis-writing; I guess it is "the filthy language she puts into my mouth." I have written it "words."

Mr. Evarts—"The filthy language she puts into my mouth is utterly false. I never spoke to that woman but once on the subject, about five minutes, fortunately in the presence of one witness, a gentleman, and simply replied in general terms to a question that I had heard the rumor. Say this to T. T., and tell him I shall stand by him in the hour of need.

With kind regards, ever yours,

(Signed by) Mrs. H. B. STANTON."

["Note.—I possess the original of the above letter.—T. T."]

Mr. Evarts [reading from the loose sheets]: "In addition to the testimony of Mrs. Davis and Mrs. Stanton, above given, my wife's own solemn and truthful declaration, is as follows:

[MRS. TILTON'S STATEMENT.]

The statement that Mrs. Davis was ever intimate with me, or a frequent guest at my house, is a fabrication. Many years ago, nearly a dozen, when we lived in Oxford-st., she once spent part of a day with me, in company with Mary Ann Johnson. Two or three years ago she called for a few minutes with Mrs. Stanton, at our house in Livingston-st. With these two exceptions, certainly ten years apart, Mrs. Davis has never been under our roof. I know her very slightly indeed. I never had a confidential talk with her on any

subject, and never told to Mrs. Davis or to any other person, the preposterous and wicked slander put upon me in Mrs. Woodhull's libel.

ELIZABETH R. TILTON."

Mr. Evarts [Reading:] "My family and others by bringing these same stories—" There is apparently, Mr. Fullerton, some leaf missing; this is not continuous.

Mr. Fullerton—It is more than "apparently," Sir; it is so.

Mr. Evarts—Well, we will see. I understood the witness to bring all that he had.

The Witness—Perhaps you read the sheets out of their order, Mr. Evarts.

Mr. Evarts—I may have done so. They are not numbered at all that I see.

The Witness—No, Sir.

Mr. Fullerton—There is a break there.

Mr. Evarts—What I have read thus far has been continuous and this is not. However there is no paging. [Reading:] "My family and others by flinging these stories broadcast to all the world as she has since done."—It is a complete sentence. "To complete the chain of documents belonging to this case, I now insert the two of chief importance, namely, the direct testimony of Mrs. Tilton and of Mr. Beecher as to the alleged criminality of their relations."

[MRS. TILTON'S STATEMENT.]

Mr. MOULTON—*My Dear Friend:* For my husband's sake, and my children's, I hereby testify with all my woman's soul—

The Witness—Those are the two cards already in evidence.

Mr. Evarts—Yes, Sir; I know they are; but here is a word I cannot make out:

that I am innocent of the crime of impure conduct alleged against me.

I have been to my husband a true wife. In his love I wish to live and die. My early affection for him still burns with its maiden flame; *all the more* for what he has borne for my sake, both private and public wrongs. His plan to keep back scandals long ago threatened against me I never approved, and the result shows it unavailing. But few would have risked so much as he has sacrificed for others, ever since the conspiracy began against him two years ago.

Having had power to strike others he has forborne to do it, and allowed himself to be injured instead. No wound to me is so great as the impression that *he* is among my accusers. I bless him every day for his faith in me, which swerves not, and for standing my champion against all adversaries.

ELIZABETH R. TILTON.

[MR. BEECHER'S STATEMENT.]

MY DEAR MR. MOULTON: I promptly comply with your suggestion of giving an explicit denial of the stories which connected my name criminally with Mrs. Tilton's. The very thought of being obliged to say anything to clear her fair fame shocks me. And I have hitherto acted under advice in refraining.

Very truly, HENRY WARD BEECHER.

Mr. Evarts—Then it goes on:

BROOKLYN, Dec. 29.

I solemnly deny the scandalous charges made against me and Mrs. Eliz. R. Tilton. Especially and emphatically I deny that there has been any criminal intercourse or any color of reason for such a charge.

My acquaintance with Mrs. Tilton has inspired me with the highest esteem for her modesty, propriety and womanly grace.

I authorize her or her husband and children to use this declaration.

I desire to state in addition that Mr. Tilton, during the whole



of this shameful scandal, has uniformly spoken in the highest terms of his wife, and has shown to me the strongest proofs of friendship.

Mr. Beach—[Handing the missing sheets of "The True Story" to the witness]. Take those.

The Witness—I don't want them.

Mr. Beach—You may as well keep them.

The Witness—And are they to go in evidence?

Mr. Beach—Keep them, I tell you.

#### MR. TILTON'S ALLEGED TESTIMONY TO MRS. WOODHULL'S VIRTUE.

Mr. Evarts—Do you know Jackson S. Schultz of New-York? A. Yes, Sir.

Q. How long and how well have you known him? A. I have known him a number of years, but not very well.

Q. Was he one of the subscribers to your fund for *The Golden Age*? A. Yes, Sir; he subscribed \$750 for it.

Q. And his partner, Mr. Southwick, another? A. Yes, Sir; a similar amount.

Q. Do you remember in a conversation with Mr. Schultz in the Spring of 1871 or the Winter of 1871-'2, either time, saying to Mr. Jackson S. Schultz that Mr. Beecher was responsible for your quarrel with Mr. Bowen, and that the whole Plymouth Church crowd were hypocrites, that you would expose them all, and could and would blow the roof off unless they came to your terms, and settle with you on your terms? A. No, Sir, the man who threatened to blow the roof from Plymouth Church was Oliver Johnson.

Q. Now, I never asked you that, and I will have that struck out. That will be struck out, if your Honor please.

Judge Neilson—The answer as it stands is "No."

Mr. Evarts—Did you say to Mr. Schultz, on either of these occasions, in substance or effect what I have said to you? A. No, Sir, I did not; my interview with Mr. Schultz—

Mr. Beach—Wait a moment.

The Witness—Was in the presence of Franklin Woodruff.

Mr. Beach—Wait, Mr. Tilton, when you are asked.

Mr. Evarts—No matter; you said nothing to him; you remember distinctly that you did not say anything to him of the substance or effect of this statement? A. I had some conversation with Mr. Schultz—

Q. Nothing? A. No, Sir.

Mr. Fullerton—One moment.

Mr. Evarts—It is right enough he should say that.

Judge Neilson—I don't know, under your former rule perhaps it is. It is put down—"I had some conversation with him."

The Witness—Yes, Sir.

Mr. Evarts—You had some conversation with him? A. Yes, Sir.

Q. And you refer to that conversation with him yesterday? A. Yes, Sir.

Q. Where was that? A. At his own house.

Q. In New-York City? A. Yes, Sir.

Q. Where you had gone for the purpose of seeing him? A. Yes, Sir; with Mr. Woodruff.

Q. Which Mr. Woodruff? A. Franklin Woodruff.

Q. Do you remember when it was? A. Yes, Sir; it was in the early Winter of 1871.

Q. 1871-'2? A. It was in the early year, January, 1871—January or possibly February, 1871.

Q. Of 1871? A. Yes, Sir; and I remember exactly what I said to him.

Judge Neilson—He didn't ask you that.

Mr. Evarts—That I don't ask. [To the witness]: In that conversation, or in any other conversation with him, you didn't say anything of that kind? A. No, Sir; I never used any such language to anybody.

Mr. Evarts—I have not asked you about the language; I have asked you about the substance.

Judge Neilson—We have the fact. That is all.

The Witness—Yes, Sir.

Mr. Evarts—Did you, in that conversation with Mr. Schultz, of which you have spoken—as you had a conversation—or at any time during the year 1871 or the year 1872, say to him, in answer to his inquiry whether Mr. Beecher had improper relations with your wife that your wife was as pure as the driven snow—that she was as pure as an angel? A. Yes, Sir; I did.

Mr. Evarts—You did! [Laughter.]

Judge Neilson—Silence.

Q. You know Mr. Southwick? A. Yes, Sir; in about the same way I know Mr. Schultz.

Q. And he, as you have stated, was one of the contributors to your *Golden Age* fund? A. Yes, Sir.

Q. Do you remember meeting him soon after the publication of the life of Woodhull on the ferry-boat, and his asking you if you were out of your mind and you replied to him; "I know what you mean. You refer to my life of Woodhull, which I glory in," or words to that effect? A. I don't remember anything about that.

Q. You don't remember? A. No, Sir.

Q. Do you remember any conversation with him? A. Oh, I have met Mr. Southwick many times on the ferry-boat; I don't remember any one in particular.

Q. Do you remember anything in connection with this subject? A. No, Sir.

Q. Did you proceed to say on this occasion to Mr. Southwick, "I took an oath before Almighty God, on my bended knees, when I was oppressed by H. C. Bowen, that the first poor creature who applied to me for assistance I would aid him or her, and that poor creature came in the person of Mrs. Woodhull, whom I know to be a natural lady and as pure as an angel?" A. I don't remember anything about it, Sir; I think that is a fiction.

Q. You don't remember any such conversation? A. I had a great deal of conversation with Mr. Southwick on the ferry-boat from time to time about Mrs. Woodhull—a great deal of satirical talk, battledore and shuttlecock to and fro; I don't remember any of the particulars of it. I remember one day he said to me: "Holloa, how are the Woodhulls," and I said: "Holloa, how are the Claflins," he being one of them. All

I remember about it is our chaffering about it in a friendly way—a semi-satirical sort of way.

Q. You don't remember saying this to him? A. No, Sir; I do not.

Q. Either chaffering or not chaffering? A. No, Sir; I do not. If I did, it was chaffering.

Q. Well, you didn't say it? A. No, Sir.

Judge Neilson—Is that all of the cross-examination?

Mr. Evarts—No, not quite, if your Honor please.

Judge Neilson [To Mr. Evarts]—Proceed, Sir. I think you had better close now. I think it is due to your opponents that you should close now, so that they may know what their tomorrow's work will be. I will remain as long as you wish.

Mr. Evarts—If your Honor requires it, that we should break the rule and go on now, of course I submit.

Judge Neilson—I don't require it, Sir; I only earnestly wish it, Sir. You will not be long in the morning.

Mr. Evarts—No, Sir. I have stated to your Honor that the conduct of a four hours' cross-examination, and the preparation in the interval for it, is as much as I think I could properly do.

Judge Neilson—I think it is.

Mr. Evarts—And I must ask you Honor to allow me to finish this in the same way.

Judge Neilson—Yes, Sir. [To the audience]: I wish, gentlemen, you would keep your seats until the Jury retire. [To the Jury]: Please be in your seats to-morrow at 11 o'clock.

Mr. Mallison—This Court now stands adjourned until to-morrow morning at 11 o'clock.

The Court thereupon adjourned until 11 o'clock on Friday.

## TWENTY-FIFTH DAY'S PROCEEDINGS.

### THE ICE BLOCKADE MAKES A HOLIDAY.

MR. EVARTS, TWO ASSOCIATES, AND A JURYMEN DELAYED IN THE MORNING—AN ADJOURNMENT TO 2 O'CLOCK—FURTHER PROGRESS POSTPONED TILL MONDAY.

FRIDAY, Feb. 12, 1875.

There was an abrupt and unexpected halt to-day in the proceedings of the Beecher-Tilton trial, on account of the enforced absence of Mr. William M. Evarts, ex-Judge Porter, and Mr. Abbott, of the counsel for the defense, and of John M. Taylor, the eighth jurymen. Judge Neilson was on the bench 10 or 15 minutes before 11 o'clock and listened to an argument in an equity case, which occupied the time until the hour for opening the great trial. The plaintiff's lawyers were ready, but Mr. Evarts and two of his junior associates and one of the jurymen were not in their places. It was soon ascertained that the ice in the East River was the cause of absence. The minutes slipped away until it was nearly half an hour after the usual hour for opening. Mr. Beach

and Judge Fullerton had come from New-York at 10 o'clock, and no other boats followed the one on which they crossed for an hour or more. Therefore, at the suggestion of Mr. Beach, with the concurrence of Mr. Shearman, the court was adjourned until 2 o'clock, the hour for the afternoon session.

Soon after the adjournment, Judge Neilson received a telegram from Mr. Evarts saying that there was a prospect of considerable delay at the ferry, and that one of the jurymen was on the same boat with himself. This boat was the Pacific of the South Ferry, which had started from Brooklyn about 8 o'clock, and after cruising about the river for several hours, put into Fulton Ferry on the New-York side. The Pacific, in returning, made a landing at a pier near the Wall-st. Ferry, after floating about for one hour and a half. The counsel were not worried by the delay, as they knew the trial could not proceed without the jurymen who was with them. It is said that as the boat was drawing near the landing, Mr. Evarts laughingly cautioned Mr. Taylor, the jurymen, to be careful in getting ashore, saying, "if you should be lost all our labor in the case would be for naught, for a jury cannot be replaced. If one of the counsel should be lost some substitute could be obtained."

Judge Neilson resumed his seat at 2 o'clock, and all the jurors were in their places. Mr. Tilton took his seat in the witness-chair, and in a moment the counsel filed in. Mr. Evarts and his colleagues were warmly greeted by Judge Neilson and the jury. Mr. and Mrs. Beecher and Mrs. Tilton and her friends came in about this time. The audience was very large, and many of the persons present had been waiting in their seats during the prolonged recess, afraid of losing their places. Mr. Evarts and Mr. Beach were observed to go up to the bench and engage in a whispered conference with Judge Neilson, after which they resumed their places. Mr. Evarts then addressed the Court, saying that he had an imperative engagement in New-York at 4:30 p. m., and that Mr. Beach had an appointment at 5 o'clock. If the trial were continued, there would be danger that they might fail in their engagements. They therefore asked for an adjournment until Monday. Mr. Beach concurred, and Judge Neilson complied with the request. Among those in the court-room to-day were Judge Kirkpatrick of Pittsburgh, Penn., and Francis J. Dupignac.

From the first days of the trial a class of unscrupulous



pulous meddlers have been sending anonymous letters to the jurymen with the idea of poisoning their minds. These letters are generally given into the hands of Judge Neilson, who destroys them, as it is impossible to detect the writers. Mr. Carpenter, the foreman of the jury, received a letter to-day written apparently by a lady. He informed Judge Neilson of the fact and was instructed to destroy the letter.

## THE PROCEEDINGS—VERBATIM.

### THE ICE EMBARGO CAUSES ADJOURNMENT.

The Court met at 11 a. m., pursuant to adjournment. Mr. Evarts and ex-Judge Porter, of defendant's counsel, being detained by the ice embargo, an adjournment was had to 2 o'clock.

Mr. Beach—If your Honor please, it is very obvious that some of our friends on the other side are detained by the ice-block in the river, and it is suggested by some of the jurymen that we might as well take our recess at this point until 2 o'clock, as there is no likelihood of the river being open until that time, and that they can employ themselves in their business for an hour or two.

Judge Neilson—What is your view about it personally? You came over this morning, didn't you?

Mr. Beach—We came over, Sir, early, we came over at ten o'clock, and soon after that the passage for the boats was closed.

Judge Neilson—What do you think about it, Mr. Shearman?

Mr. Shearman—Well, I think, your Honor, we might about as well adjourn, at any rate, until one o'clock.

Mr. Beach—Oh, we don't want to come here at one. That is the hour of adjournment.

Judge Neilson—Well, gentlemen, that seems to be the view, then.

A Juror—We are not averse to one o'clock, if that is the order of the Court.

Mr. Beach—It might as well be two

Mr. Carpenter [Foreman of the jury]—I think we better say until two o'clock.

Judge Neilson—Will gentlemen please keep their seats a few minutes? The Court has not adjourned.

Mr. Fullerton—I suggest that Mr. Shearman, in the meantime, go over to New-York after them. [Laughter.]

Judge Neilson—We will meet at two o'clock, gentlemen of the jury, please.

The Court then took a recess until two o'clock.

### AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

[The five sheets of the original of the "True Story" were each marked "Exhibit D, 104."]

Mr. Evarts—Your Honor is probably sufficiently aware of the condition of navigation between New-York and Brooklyn, to know that it accounts for the absence of the jurymen, who, unfortunately, was on that side of the water, and of the counsel for the defendant, who are always there at night; and we now present to your Honor this state of circumstances. Our boat was an hour and a half on the water, to say nothing of the delay before starting. I have made the only appointment that I have been able to make during the week, at the close of the court, to complete some very important matters that are to be sent to Washington to-night, and I do not wish, if I can avoid it, to be under any difficulty or danger of not being at my office at half-past four o'clock. My friend Mr. Beach, also, has some important engagement, which requires him to be in the city at the hour of five, I believe; and under these circumstances, upon conference, we feel that unless your Honor should feel that the progress of the trial should constrain you to the contrary, that we should really lose but little now in taking our adjournment until Monday; otherwise we might lose all opportunity of getting across and be placed at great disadvantage.

Mr. Beach—Under any circumstances, Sir, we should be compelled to ask your Honor to make an earlier adjournment this afternoon than is usual, and I do not think any substantial progress could be made in the examination, or the close of the examination of Mr. Tilton, before we should be compelled to present that request to your Honor, and I do not think we should make any available progress by proceeding for the remainder of the day which, under those circumstances, would be left; and, therefore, we concur in the request of Mr. Evarts that your Honor should adjourn now until Monday.

Judge Neilson—Well, in view of the uncertainty of your being able to return, of which you have a better means of judging than I have, having seen the condition of the ferry, and regarding your engagements as very important, and your chance to keep them precarious if we continue the business, I think I ought to comply with your request. [To the jury.] When we adjourn, gentlemen, we do so until Monday morning at 11 o'clock. Gentlemen will keep their seats a few moments. [To the Clerk.] Adjourn the Court and let the crowd go away.

Mr. Mallison (Clerk)—The Court stands adjourned until Monday morning, at 11 o'clock.

Judge Neilson—The jury will please remain a moment. Now, those gentlemen that could not wait until the jury are gone, will please retire. [To the jury.] Now, gentlemen of the jury, you will please retire. I hope to see you safe here Monday morning.

## TWENTY-SIXTH DAY'S PROCEEDINGS.

THE PLAINTIFF'S CROSS-EXAMINATION  
ENDED.

HIS THREAT TO SHOOT MR. BEECHER—WHY THE LETTER TO DR. BACON WAS WRITTEN—MR. MOULTON'S FINANCIAL TRANSACTIONS WITH MR. TILTON—THE WITNESS EXPLAINS HIS THEORY THAT HIS WIFE IS PURE AND YET GUILTY OF ADULTERY—INTRODUCTION OF EIGHT PHOTOGRAPHS OF MR. BEECHER FOUND IN A CLOSET AFTER MRS. TILTON LEFT HER HUSBAND.

MONDAY, Feb. 15, 1875.

Promptly at 11 o'clock to-day Mr. Evarts resumed his cross-examination of Mr. Tilton. From the first it was evident that the questioning by the defense was drawing to a close, and when recess arrived Mr. Evarts announced that he would finish with the reading of three letters after the interval. The queries followed no regular line of examination, but were intended to close all the gaps in the investigation by the defense. The first question was regarding a statement in the "True Story," about Mr. Beecher's alleged immoralities, which Mr. Evarts said he overlooked when reading it last week. The stereotyped reply of the witness, that he did not remember the exact words, was given. The examiner next inquired what the witness meant when he said that he would shoot Mr. Beecher if he resigned from Plymouth Church, casting a shadow on his (the witness's) family, and Mr. Tilton replied that he meant just what he said. "Would you have shot him?" asked Mr. Evarts, with a tone of surprise. "I presume I should," replied Mr. Tilton in the most listless manner.

After bringing out the denial of the witness that he wrote or dictated the letter of Mrs. Tilton in September, 1872, in which she denies the story of crime, Mr. Evarts passed to the consideration of events surrounding the conduct and support of *The Golden Age*. The letter from Mr. Clarke, formerly its associate editor, in which the writer said that Mr. Tilton's name was a millstone on the paper, was offered for the third time, and again ruled out. This letter was first introduced by the plaintiff and objected to by the defense, and ruled out. Twice after that the defense has attempted to introduce it but has not succeeded, but to-day most of its contents were made known by putting the statements contained in it in the shape of questions. The witness was asked if he had heard of a

project of starting a new political paper founded upon the situation of politics existing at the time of Mr. Greeley's death. He had heard of such an enterprise, but had no part in it. Then the witness was asked if he were ever editor of the paper *The Revolution*, and he said he was not. A prospectus of that periodical—a little sheet of paper—was shown, and it gave occasion for the first joke of the day, which was the observation of Judge Neilson that if that was *The Revolution* it was a very small revolution. It was ascertained that Mr. Tilton received nothing for *The Golden Age* when he disposed of it to Mr. Clarke. The witness was next asked what induced him to write the Bacon letter. He gave five or six reasons, which he said made the provocation. The questioning brought a statement that the witness believed that after 1872 Mr. Beecher intended to strike him down at the first opportunity. The witness was asked about some of his statements while under examination before the Plymouth Investigating Committee, particularly in regard to his letters written to the Congregational Council, he having said, as is alleged, that he did not care whether the scandal came out as a result of these letters or not. There was also close inquiry about the manner in which his "Statement" came to be published in *The Brooklyn Argus*. The witness said that he was at Delmonico's when he first heard that it had been published. He repeatedly asserted that he had no hint of its intended publication before it was printed.

Mr. Tilton, it seems from his testimony, has had no employment since he left *The Golden Age*, though he has an income. The witness swore that Mr. Moulton had contributed nothing toward the expenses of this suit. At this stage the hour of recess arrived, and the court adjourned for an hour. The cross-examination only lasted fifteen minutes after the interval, that time being occupied by the reading of three letters from Mr. Tilton to his wife, written in 1868. Without formality Mr. Evarts sat down, his task finished, and ex-Judge Fullerton arose and began putting the questions of the redirect examination. The first matter of importance reached was, whether Mr. Tilton knew that his wife was to leave him, as she did in 1874, soon after her appearance before the Investigating Committee. He said that he did not. Perhaps the most comprehensive explanation that the witness has yet made regarding his remarkable theory of his wife's alleged sin was called out by



Mr. Fullerton's question, how he reconciled the statement that his wife loved everything good and hated everything bad, with the fact that she is charged with adultery.

Still more literature was added to the already large collection now in the hands of the lawyers. Besides the letters read during the last moments of the cross-examination, Mr. Fullerton introduced Mr. Tilton's protest in *The Independent* against Mr. Beecher's letter to the Cleveland Convention, which the defense had introduced; also the portions of the plaintiff's reply to Mr. Greeley's letter regarding woman's rights, which in its reading the defense had omitted.

The witness was made to give his views of marriage and divorce. The former he said was the union of one man to one woman for life, and possibly beyond life, for better or for worse. His views of divorce, he said, were shared by the mass of the people of the United States. In the New-England States, and in nearly all of the Western States, a woman may get a divorce from her husband if he treats her brutally, neglects to support her, is an habitual drunkard, or for other reasons. New-York, Mr. Tilton proceeded to say, has a unique code, which is out of harmony with the sisterhood of States, allowing divorce from only one cause. The witness denied that he ever had other views of divorce, or that he believed in "free love" doctrines.

The little poem entitled "French with a Master," the reading of which by Mr. Evarts has been one of the bright episodes of the trial, was referred to by Mr. Fullerton as having been introduced by the defense as an expression of indelicacy. To show that such a meaning was not intended, Mr. Fullerton read one of the verses in which "orange buds" are mentioned, and asked the author to give the prose of his poetry, which he did, saying that it was the story of a lover teaching French to his sweetheart and proposing marriage to her.

The most notable incident of the day was the introduction by Mr. Fullerton of a little box containing eight photographs of Mr. Beecher, taken in different positions and most of them at different times, which Mr. Tilton testified he found in a little closet in which his wife kept her letters and gifts from Mr. Beecher. Mr. Evarts objected to putting in evidence regarding the contents of the closet. Judge Neilson decided, however, that Mr. Fullerton might "open the closet," to which the counsel rejoined that

he had it open already, but his opponent wished to close it. The photographs were passed among the jurymen, and examined with interest. They are all cabinet photographs, except a carte de visite on which Mr. Beecher's autograph is written, and a "tin-type," locket size. The last half hour of the afternoon session was given to an examination regarding Mr. Tilton's religious views—his early belief, the cause, time, and nature of the change in them, and his present convictions.

## THE PROCEEDINGS—VERBATIM.

### ANOTHER BIT OF THE TRUE STORY.

The Court met at 11 a. m., pursuant to adjournment. Theodore Tilton was recalled and the cross-examination resumed.

Mr. Evarts—I find, if your Honor please, in looking over the notes of the testimony, and this paper, that I omitted a paragraph in my inquiries of this witness, which I will now put to him.

Judge Neilson—In the so-called "True Story"?

Mr. Evarts—In the so-called "True Story." It immediately precedes that which relates to Mrs. Morse. It is a short paragraph which escaped my eye. [To the witness.] I ask you whether this was a part of your "True Story:" "At the same time, by other persons and from other quarters, stories were set afloat concerning Mr. Beecher of the same damaging kind; for instance, there came from Washington a statement, traceable I know not to whom, that Mr. Beecher preached every Sunday to a dozen of his mistresses." Was that in your true statement?

A. I cannot swear positively that it was.

Q. You cannot swear that it was not? A. No, Sir.

### MR. TILTON'S THREAT TO SHOOT MR. BEECHER.

Q. Mr. Tilton, you remember, in the course of the direct examination, the stage of this matter when Mr. Beecher proposed a resignation of his pastorate? A. Yes, Sir.

Q. You remember that? A. Yes, Sir.

Mr. Evarts—[To plaintiff's counsel.] That was not an exhibit?

Mr. Morris—No, Sir; Mr. Moulton stated the contents.

Mr. Evarts—I was looking for it as an exhibit.

Mr. Fullerton—It was not an exhibit; Mr. Moulton gave it from recollection.

Mr. Evarts—Exhibit No. 26 I want. It is another matter. I shall want that in a moment.

[Mr. Morris produced Exhibit No. 26.]

Q. I understand you to have stated, in connection with that resignation—which we do not find for the moment; perhaps it is sufficiently in your mind—I understand you to have stated, upon hearing that resignation recited to you by Mr. Moulton—the proposed resignation recited to you by Mr. Moulton—that you stated that if Mr. Beecher resigned you would shoot him in the street? A. Not that, Sir.

Q. What was it you said? A. I said that if he resigned, flinging back a shadow on my family, I would shoot him in the street.

Q. You meant by that, that if he resigned with such a resignation as that? A. Yes, Sir.

Q. That was read to you? A. Yes, Sir.

Q. That if he wrote that resignation and resigned, you would shoot him in the street? A. Yes, Sir; because he alluded to my family in it.

Q. What did you mean by that? A. Exactly what I said.

Q. And if he had resigned, you would have shot him in the street, would you? A. Well, I presume I should.

Q. Here it is:

"I tender herewith my resignation of Plymouth Church. I have stood among you in sorrow for two years in order to save from shame a certain household, but since a recent publication makes this no longer possible, I now resign my ministry, and retire to private life."

That is the resignation, is it not? A. I don't remember the phraseology of it. I remember that the resignation contained a pointed allusion to my family.

Q. Well, that is the paper? A. I did not object to his resigning. I only objected to his flinging back a shadow on Elizabeth.

Q. Yes; very well. Now, this was about June, 1873? A. It was May 31st.

Q. Well, I say about June, 1873? A. It was May 31st; Saturday night.

#### AUTHORSHIP OF ONE OF MR. MOULTON'S LETTERS QUESTIONED.

Q. On the 1st of June you were at Mr. Moulton's house? A. Yes, Sir; that was Sunday.

Q. 1873. Do you remember, Mr. Tilton, at what hour of the day you were there first, if you were there more than once? A. My impression is I was there twice—once during the day and then during the evening. That is my present recollection.

Q. How early in the day were you there? A. That I don't remember.

Q. Was Mr. Moulton then abed? A. I don't remember that.

Q. Look at this Exhibit D, 43, which is Mr. Moulton's letter of that day to Mr. Beecher, and say whether you were present when that letter was written? [Handing witness Exhibit D, 43.] A. No, Sir; I was not.

Q. When did it first come to your knowledge that it had been written? A. I do not think I ever saw the letter until this—until it appeared, I think, in one of the statements last Summer. I remember, however, that during the day Mr. Moulton informed me that Mr. Beecher had written him a letter, and he had written a reply, but he did not show me the reply.

Q. And you were not at Moulton's, you think, until after he had received Mr. Beecher's letter and written his reply? A. That is my recollection, Sir. I think the letter which Mr. Beecher sent to Mr. Moulton on that day was sent early in the morning, that is my impression, and was received by Mrs. Moulton before Mr. Moulton had arisen.

Q. Well, we have the evidence on that subject. A. And that

this reply by Mr. Moulton was written in bed; but I don't know those facts from personal knowledge.

Q. You are quite certain, Mr. Tilton, are you, that you were not present and did not take any part in the preparation of this letter? A. Oh, not at all, Sir.

#### A LETTER OF MRS. TILTON'S ATTRIBUTED TO MR. TILTON.

Q. Let me call your attention now, Mr. Tilton, to a letter of your wife's in the end of December, 1872, beginning, "My dear Friend: For my husband's sake and my children's." You remember the letter? A. Yes, Sir.

Q. Did you write that letter? A. I did not, Sir.

Q. Did you draft it? A. No, Sir.

Q. Was it written by your wife without any intervention from you? A. It was written by my wife in consultation with me. She wanted to have it written. She wanted a card denying Mrs. Woodhull's story.

Q. Well, that has all been testified to. A. I think she consulted me as to the phraseology of it, in parts.

Q. I think you have said that Mr. Beecher and yourself and your wife were together at Mr. Moulton's? A. Yes, Sir.

Q. At this time, the time that these two letters were considered before you? A. Mrs. Tilton's letter had been written, I think, before that. She was present in order that Mr. Beecher's card might be seen by her and be judged satisfactory by her.

Q. Well, she was there? A. Yes, Sir.

Q. We won't repeat the matter, for that is testified to. Now, when you came there, or when your wife came there at this interview, and for this interview, was that letter then there in your handwriting, and was it then and there and afterwards copied by your wife and signed? A. I don't remember whether I took the original letter of Mrs. Tilton's there, or whether I took a copy of it; at all events, either the original or a copy was there, in order that Mr. Beecher might see exactly what Elizabeth desired to do and had done; in other words, to see her card to which he was requested by her to present a companion piece.

Q. Well, I understand. You think then that the letter which appears as your wife's may have been produced there at that interview in your handwriting? A. I think that either the original in her handwriting, or a copy in mine, was there. I know the card was there in some form.

Q. That we understand. A. Then she afterward came herself.

Q. But the proposition that I wish to ask your attention to is this: that it was there in your handwriting, and was then and there copied by her and signed? A. No; it was not so.

Q. That is not so? A. No, Sir.

Q. Wasn't it on that occasion complete as her writing and with her signature? A. I think, Sir, it had been written complete by her, signature and all, either the day before or that morning. I know the first idea of that interview did not contemplate her presence at all, but her personal presence there was in order that she might see Mr. Beecher's card and pronounce her opinion as to that.



Q. You cannot say, then, as I understand, whether there was at any time, at that interview, then present, this letter in her handwriting and signed by her? A. Well, I have already said that either that letter, in her handwriting and signed by her, was there, namely, the original, or else that I had carried a copy of it there.

Q. In your handwriting? A. Yes; I don't know which.

Q. And which, you cannot say? A. I cannot state now which; no, Sir.

#### THE CLARKE LETTER AGAIN PRODUCED.

Q. [Letter handed to witness.] Look at this paper, which is marked for identification 49, known as the Clarke letter, and read the letter, if you please? A. Do you wish me to read it, Sir?

Mr. Evarts—Yes. [Letter read by the witness.]

Q. Did you see that letter, or know of its being written, at the time that it was written? A. No, Sir; I do not think I did; Mr. Moulton and Mr. Clarke were very intimate personal friends, and I very frequently was present with them at their talks about the paper; I don't think I saw this letter until it was turned up here during the trial. Still, I may have done so; it has escaped my mind if I have.

Q. Mr. Clarke at that time was the managing editor, wasn't he, of *The Golden Age*, or in some way associated in its conduct? A. He was an associate editor; yes, Sir.

Q. Were you aware at this date, or about this time—beginning of the year '73—of a purpose or wish that *The Golden Age* should be disposed of? A. Wish on my part?

Q. Yes. A. Well, Sir, I have had that wish for a long while; I don't remember exactly the date at which it began.

Q. Well, were you aware of efforts to dispose of it? A. I was aware of this—Mr. Clarke, my associate, who had been previously editor-in-chief of a newspaper, had several times talked with me about the possibility of his becoming owner of *The Golden Age*, and being editor-in-chief of that; and it was a project which I always favored. I desired a long time ago to abandon the newspaper, and go into other literary toils. He was solicitous to have the paper, and very frequently talked on that subject; but I could not fix the date at which those talks first began.

Q. Well, were you aware, Mr. Tilton, of the sentiments or prejudices regarding your connection with that newspaper—which affected its commercial prosperity, its pecuniary prosperity—in the sense in which this letter of Mr. Clarke presents it? A. Well, Sir, I do not know—

Mr. Fullerton—Well, one moment; that question is predicated upon a letter not in evidence.

Mr. Evarts—But I have shown it to him.

Mr. Fullerton—That is very true, but his answer will be unintelligible unless the letter is in.

Judge Neilson—Yes, Sir.

Mr. Evarts—We should be very glad to get it in.

Mr. Beach—No doubt about that.

Judge Neilson—[To Mr. Evarts.] Cannot you frame your question omitting the letter?

Mr. Evarts—[To the witness.] Were you aware that in the efforts to dispose of this newspaper it was found that those to

whom it was offered had such a painful impression, if not seated prejudice, against Mr. Tilton that they were unwilling to even seriously consider the matter, and that Mr. Clarke had been blamed for retaining a connection with such a man and paper? A. No, Sir; I was not aware of it, for he states in the letter that he did not inform me—

Mr. Beach—Wait, wait!

Judge Neilson—"I was not aware of that"—that is the answer to it.

Q. Were you aware of the feeling in regard to the paper from your connection with it, even with those who had no prejudice against you, that they saw no field and no future for the paper, and that they advised its giving up, especially as its editor was a millstone upon it? A. No, Sir; was not aware of that.

Q. You were not aware of that? A. No, Sir.

Q. And yet you don't feel sure but that you saw this letter? A. Well, I cannot say that I did not see the letter; I have no recollection of the letter; I would not swear positively that I had not seen it; I don't think I ever saw it until it was produced here.

#### MR. TILTON'S HEALTH ALWAYS GOOD.

Q. Were you aware at this time that it was proposed or considered, on the part of Mr. Clarke or any other of your friends interested in you and the paper, that you ought to go abroad into another atmosphere and new scenes? A. I don't remember that anybody spoke to me on the subject.

Q. You don't remember of that being considered by Mr. Clarke and yourself, or other friends, in connection with your then position in *The Golden Age* and the situation of that paper? A. No, Sir; some friends of mine, after I got through writing a book, which was a number of months later, thought that I had better go abroad and get rested. I don't remember any such suggestion at the time of that letter.

Q. Who were those friends? A. Well, I think Mr. Clarke was one, possibly Mr. Carpenter—some personal friends; I had been working a year very hard and they said, "Run over and spend a Summer vacation in Europe."

Q. Were you aware that at this time your condition of health and spirits gave uneasiness to your friends in regard to your health? A. No, Sir.

Q. They desired some change of scene for your recreation? A. I don't know of any ground for such anxiety, Sir; my health has always been very fair until I got into this trial—bad atmosphere.

Q. Have you any doubt that at this time Mr. Clarke, in his conversations with you, did advise your going abroad? A. Well, Sir, I don't remember that, whether he did or not; I cannot fix any—the date of any—conversation with Mr. Clarke. I remember that, as I said before, after I got through writing the book and had prepared it for the press, Mr. Clarke and a few other friends said, "Now is the time for you to run over and spend a Summer vacation in Europe;" that did not take place until several months after this letter was written.

THE CLARKE LETTER AGAIN RULED OUT.

Mr. Evarts—I now offer, if your Honor please, to read this letter which has been twice proposed—once by my learned friends, and then again on our part.

Mr. Beach—The situation is not changed, Sir, since your Honor ruled it out.

Judge Neilson—The first time the suggestion was that the letter of Mr. Clarke was shown to Mr. Beecher; then there was an attempt to identify it as the one shown on your objection of failure to show that, and an offer on your part and an attempt to identify it. Have we now anything additional?

Mr. Evarts—I now offer it as shown to Mr. Tilton, leaving it a question on his statement which is not positive that it was or that it was not.

Judge Neilson—I don't think a paper becomes evidence by merely proving that it was shown to the witness.

Mr. Evarts—No, but to the party; not merely to the witness but to the party. Mr. Clarke and he were in this relation of association and interest in regard to *The Golden Age*, and this is a letter to Mr. Moulton concerning that affair.

Judge Neilson—By Mr. Clarke?

Mr. Evarts—By Mr. Clarke; and the witness says that he cannot say that it was, or that it was not, shown to him.

Judge Neilson—I don't think that it is evidence.

Mr. Evarts—I suppose that it may be a question, under the circumstances, whether or not the jury would conclude that it was shown to him or was not shown to him.

Mr. Beach—It is not a question for the jury, Mr. Evarts—I beg pardon.

Judge Neilson—I don't think it is admissible.

Mr. Beach—I was going to remark, if the counsel will permit me, that it is a question for the Court to determine the facts in regard to the competency of evidence.

Mr. Evarts—Yes; it is for the Court, no doubt, but the Court often determines such questions by saying: "There is dispute here whether that is so or not; that is a question of fact, and upon the determination of that question of fact it will be determined whether this evidence is admissible or not."

A PROJECT BORN OF THE POLITICAL EVENTS OF 1872.

Judge Neilson—That would be a correct disposition of the question where there was some evidence on each side, and some doubt, and where the matter in its nature was material. I don't think this is evidence.

Mr. Evarts—Your Honor will be so good, then, as to note my exception. [To the witness.] Do you remember about this time, which you will notice was at the close of the political campaign and after the death of Mr. Greeley—do you remember in the latter part of that year or the beginning of the following year of a project being considered by you, of the establishment of a new political paper founded upon the then situation of politics and of Mr. Greeley's death, and so the effect that had or might have upon the already established paper *THE TRIBUNE*? A. No such project was considered by me; I heard of

some such project talked of by others, but I had no part or lot in it.

Q. Well, but was that project entertained by your friends in reference to a connection of yourself with it? A. Not in the slightest degree that I know of; I never had any idea of joining any such enterprise.

Q. Well, did you hear of that at the time?

Mr. Beach—Hear of what?

Mr. Evarts—Of a project on the part of some of your friends.

Mr. Beach—On his behalf?

Mr. Evarts—No; of establishing such a newspaper—of establishing a newspaper.

Mr. Beach—Well, what if he did hear of it?

Judge Neilson—He has said that he did. [To the witness.] I understand you so.

The Witness—I heard of two or three different projects talked of, but they were not my projects.

Mr. Evarts—That I have understood you to say. Well, who were these friends of yours that you understood were entertaining or talking about such a project?

Mr. Beach—He did not say that any of his friends talked about it. You are assuming it.

Mr. Evarts—I submit it to your Honor. [To the witness:] Now, is that so?

The Witness—Ask your question again.

Q. Were those friends of yours that you understood were entertaining a project of establishing a new paper? A. Well, friends in one sense—I think the enterprise came from Mr. Cornell; I don't know that I ever saw him. There were two or three enterprises started.

Q. Connected with a new paper? A. Yes, Sir; I had nothing at all to do with it whatever; all I know on the subject is my remembrance of the gossip at the time.

Q. And it was at about this period—the end of the year 1872 or the beginning of the year 1873, wasn't it? A. My impression is that that was later. I refer to certain enterprises which culminated in the newspaper called *The Republic*, lately established in New-York and—

Q. Well, that is a very recent matter? A. Well, it was talked of a long time before. Do you allude to *The Brooklyn Union*, Mr. Evarts?

Q. Oh, no. A. Because some gentlemen in this city wanted to buy that for me and I declined.

MR. TILTON DENIES ANY INTEREST IN THE REVOLUTION.

Q. Oh, no. During what period of time was there a newspaper published here, either in Brooklyn or New-York, called *The Revolution*? A. Well, Sir, it was published for a number of years; I don't remember its beginning or end.

Q. About when? A. Can't say.

Q. Well, it was somewhere within these years that we have been talking of, wasn't it? A. My impression is that it began before the affairs that have been discussed.

Q. Before 1870? A. Oh, yes; many years before.

Mr. Beach—Oh, yes; it was discontinued before 1870.

The Witness—I think not.



Mr. Beach—Yes, Sir, it was.

Mr. Evarts—Well, I am trying to get at the fact.

Mr. Beach—Well I took it through all its existence.

Mr. Evarts [To the witness]—Well, we will take the best of your recollection when this *Revolution* newspaper existed and was published. A. I can't say when it was founded, Sir.

Q. Well, you can't recollect sufficiently to state when that affair—that newspaper was current? A. It was founded by Miss Susan B. Anthony and Mrs. H. B. Stanton, but in what year I don't remember; I should say, at a rough guess, somewhere about 1865, but I may be wrong about it.

Q. And when do you think it terminated? A. Well, Mr. Beach says before 1870, but I am inclined to think that it lasted longer than that.

Q. And were you, at any time, editor of that? A. No, Sir.

Q. Who were editors of that paper at the time that you know of its existence?

Mr. Fullerton—It seems to me that that is foreign to this issue.

Mr. Evarts—Well, that depends.

Mr. Fullerton—That depends on something you have not suggested yet.

Judge Neilson—I don't see the materiality of it. As, perhaps, counsel does, I think he may answer it.

Mr. Fullerton—Well, I think the Court ought to see the materiality of it.

Mr. Evarts—I have never heard before, if your Honor please, that the question of relevancy or materiality applied to a cross-examination, except under the restraint of the Court when it perceives manifestly either a trivial or a prolix inquiry.

Mr. Fullerton—That is just the character of the inquiry I suggest.

Mr. Evarts—Well, that is not so polite as it might be. As it is the first question that is asked, it could hardly be said to be within that rule.

Judge Neilson—I think he may answer.

Mr. Fullerton—Well, I think it is prolix; it is not impolite to suggest that.

Mr. Evarts—Oh, yes, it is.

Mr. Fullerton—Well, you will have to stand it, then, because it is prolix.

Mr. Evarts—The cross-examination may be prolix, but the topic is not, because I have just begun on it.

Mr. Beach—Well, the discussion is—

Mr. Evarts [To the witness]—Who were the editors? A. It was edited from time to time by Mrs. Anthony, Mrs. Stanton, Mr. Pillsbury and Mrs. Bullard; I don't know whether she was the last editor or not—yes, Sir; there was one other editor later, Mr. Clarke.

Q. Perhaps this may refresh your recollection as to names. [Offering a paper to witness.] A. No, Sir; my recollection don't need any refreshment about that; I know it perfectly.

Q. Well, that is dated— A. I think I have given you all the editors of the paper.

Q. That is dated June 2d, 1870.

Judge Neilson—Is that the paper?

Mr. Evarts—This is the prospectus of it.

Judge Neilson—Oh!—I was going to say it was a small revolution if that was the paper. [Laughter.]

Q. Were you the editor or assistant editor at that time on that paper? A. No, Sir.

Q. Please look at that article and say if that was written by you? A. I don't remember, Sir.

Q. Well, do you recognize this style as yours? A. Well, Sir, I could not say at this—perhaps it was, perhaps not; there is nothing very particularly noticeable about it. I may have had something to do with the article; perhaps I did.

#### THE TILTON-MOULTON-TRACY INTERVIEW.

Q. You have spoken of an interview between yourself, Mr. Moulton and Mr. Tracy, alone, subsequent to an interview in which Mr. Franklin Woodruff, you remember— A. Yes, Sir.

Q. Now, can you fix the time at which this interview at which you and Mr. Tracy and Mr. Moulton were together and no others—can you fix the time that that occurred? A. I fixed the time the other day, Sir; between Christmas and New Years, or else later.

Q. Do you remember what day of the week it was, or don't you know? A. No, Sir.

Q. Whether it was a week day or a Sunday? A. I do not.

Q. Do you remember whether it was in the day time or in the evening? A. It was in the evening.

Q. And do you remember how that meeting came about; how it was produced? A. I do not remember, Sir.

Q. Was it a casual meeting? A. I don't remember that.

Q. Do you know how long it lasted? A. I know it lasted so long that General Tracy went to sleep. [Laughter.]

Q. And at what hour of the night did it terminate? A. I don't remember that.

#### MR. MOULTON'S PRINCELY GENEROSITY.

Q. Have you any account of the money transactions between you and Mr. Moulton? A. No; other than the firm of Woodruff & Robinson show on their books.

Q. What amounts of money— A. Ah! I ought to say the books of *The Golden Age*.

Q. The books of *The Golden Age* also contain an account? A. Well, the books of *The Golden Age* will contain an account of moneys paid to it.

Q. Paid to it? A. Yes, Sir; at least I presume they do. I am not the owner or bookkeeper; I have not seen the books for a long while.

Q. Who has those books now? A. The present proprietors of the paper.

Q. Who are they? A. Well, they are strangers to me; they are gentlemen lately connected with *The Christian Union*; I think one is Mr. Wetherby, the other Mr. Johnson; I think also Mr. Clarke. I don't know the exact proprietary status of the paper.

Q. Well, they have the establishment, and you suppose the books of the old concern are with the new? A. Yes, Sir; that is my supposition.

Q. Now, can you tell us what amount you are now indebted

n to Mr. Moulton? A. I don't know I am indebted to him at all, Sir; it was with Mr. Moulton's free consent that I sold *The Golden Age*, with all implied obligations resting upon it, which came from the moneys that he advanced, amounting to a few thousand dollars, perhaps \$5,000 or \$6,000.

Q. How much were you at any time indebted to Mr. Moulton? A. I should think, perhaps, in one view of the case, I was indebted to him five thousand dollars, or six thousand dollars.

Q. At what date had your debt come to that amount? A. I should think about the time I sold the paper.

Q. When was that? A. The first of June, 1874.

Q. Had you at any time repaid to him any loan, or reduced in any way your debt to him? A. No, Sir; Mr. Moulton would not take anything in return; I tried to get Mr. Moulton to take my property at Llewellyn Park; he said, "No, wait;" then I tried to get him to take one-half, or one-third, or one-quarter of *The Golden Age*, and he said he would in due time, if there was no reimbursement in any other way; Mr. Moulton told me to be very much at my ease about it, which is just like him, for he is a princely man.

Q. At the time of this conversation with Mr. Moulton, was the amount of your debt named or spoken of between you? A. During the year, while I was writing a book—which was from September, 1873, to September, 1874—I very rarely went to the office; I stayed all the time at my house, and Mr. Moulton told me that he would see that the paper was kept going during that time, not to disturb myself about it; once or twice during that year, I spoke to him about his kindness to the paper, and told him that I was carrying an obligation which I did not know how I was going to pay. He always said to me, "Be quiet and easy in your mind, for if there is no other way of payment, I will take one-half of the paper or one-third of the paper, and reimburse myself in that way."

Q. It appears by the evidence, as I understand it, that commencing with a certain sum of \$1,000 on the third of May, 1873, you received, between that date and the end of May, 1874, the sum of \$5,000 or thereabouts from Mr. Moulton. How did you receive those sums of money? A. I think they were generally paid by Mr. Moulton to Mr. Ruland.

Q. Have you any mode of verifying the fact? Will the accounts of *The Golden Age* show? A. I don't know whether they will or not; I have not looked at the accounts; I never kept them, and I never looked three times into the books of the paper; my impression is that Mr. Ruland generally got a check, and came to me to indorse it, or something of that kind.

Q. When the first note was sent to you, and a voucher required of you, you declined to become a debtor? A. Yes, Sir.

Q. And you then immediately received the \$1,000? A. Shortly afterwards, Sir.

Q. Well, the next day, or some days afterward, did you not? A. I don't remember how soon; the circumstances were these—

Q. Now, did not you consider yourself a debtor when you did take that money? A. Yes, I did.

Q. Very well; that is enough? A. In a moral sense.

Q. And so thereafter, with all the sums that you received from Mr. Moulton, you considered yourself his debtor, did you not? A. I certainly did; I would not take money from any man without a desire to return it.

Q. What distinction, then, did you draw between willingness to be made a debtor, without a prospect of repaying, and willingness to give a voucher for the debt? A. Mr. Moulton sent to me one day a check for \$1,000, desiring me by the hands of the messenger to give a note for it, or something of that kind—I do not know exactly what; I returned it, saying that I could not borrow the \$1,000, for I did not see my way clear of paying it back; Mr. Moulton then came to me in person and said, "Now, I know you need the money; never mind giving any obligation about paying it back; I have trust in your good fortune and your integrity; consider yourself under no obligation." Under these circumstances I took the money and applied it to the paper. He said that he would reimburse himself in some other way if I could not pay him the money.

Q. Did he name the way in which he would reimburse himself? A. Yes, Sir. He said: "There is the Llewellyn Park property, and there is the paper;" and, said he: "I can reimburse myself at any time, so don't you be disturbed."

Q. Then you understood that he was satisfied to give you the money without any voucher or security other than your property and a belief in your integrity? A. I understood it was more—an act of friendship between Mr. Moulton and myself; not a business transaction between one man and another, but the act of the loving friend, who, out of his abundance, was willing to help me in my necessities.

Q. And who, being aware of your property and trusting in your integrity, he told you he could get the money when he needed it?

Mr. Fullerton—He did not say that.

Mr. Evarts—I think he did. I understood it so.

The Witness—No; he said he knew that if ever my fortunes came again to flood tide, I would repay him, and he said, "at all events, without that, if you should die, you have property enough to reimburse me; so take it and make yourself comfortable about it."

Q. Very well. A. It is not every man that would have done it; but Mr. Moulton was just the man to do just that.

Q. Now, when did that course of his liberality and of your acceptance of it terminate, and how? A. I don't think it ever has terminated.

Q. You mean that he has continued to advance you money up to the present time? A. No, Sir; I think he would if I needed it.

Q. What I inquire is, when the actual advance of money to you by Mr. Moulton in the course of this his liberality, and your acceptance of it came to an end, and how? A. Well, Sir, the principal need of money was to float the paper along; after I sold the paper, that necessity ended with that sale; from that time to this, Sir, I have been in a better condition.

#### SALE OF "THE GOLDEN AGE."

Q. On the sale of this paper what did you receive?

A. The paper was somewhat in debt—perhaps about \$1,000, or



a little less, I think; it was in another sense more largely in debt to Mr. Clarke, to whom I had paid a very meager salary—less than his services were worth; I always considered that I owed him \$5,000 or \$10,000 more than he had been paid, and I sold the paper to him on condition that he would assume all the obligations and would consider it a settlement in full as between himself and me.

Q. So that on the sale nothing passed to you of a pecuniary benefit? A. No, Sir; none at all.

Q. Can you fix definitely the time of that sale? A. June 1st, 1874; possibly July 1st—June or July; I won't say which.

Q. Now, this last payment to you, on Mr. Moulton's account, or according to Mr. Moulton's account, was on the 26th day of May, 1874. Did you or not ascertain that you were to receive any further advances from Mr. Moulton? A. No, Sir; I do not remember anything of that kind; I had for a year begged Mr. Moulton to let the paper stop; he did not want it to stop; I wanted it to stop; I wanted to get out of it; he forbid it, and said "if the paper stopped the case would be injured and I owed it to all the parties to keep the paper going."

Q. This money then received by you from Mr. Moulton was in part applied to your family expenses, wasn't it? A. I made whatever use of it my needs required.

#### MR. MOULTON WITHOUT SECURITY FOR HIS LOANS.

Q. Have you ever given Mr. Moulton security for any of these advances upon your pictures, or any of them? A. Never, Sir, at all.

Q. Have you ever sent any of them, except this one—the portrait of Mr. Beecher—to him or to his house? A. Oh, at various times in early years I used to give him an engraving.

Q. I am not speaking of gifts? A. Oh, I have never since that; no, Sir.

Q. In no other sense? A. I gave him my own portrait; Mr. Paige painted Mr. Beecher and myself.

Q. That was a gift, a present? A. Yes, Sir.

Q. Do you remember a painting of the Saviour that was produced by Mr. Paige for you? A. Yes, Sir.

Q. Was that retained at your house, or was it sent to Mr. Moulton's? A. About two or three years ago Mr. Moulton borrowed it for awhile, and it hung a week or two on his wall while he had some guests there, and then it was brought back again to my house.

#### MM. TILTON PREPARES FOR AN EXPECTED MOB.

Q. Where is it now? A. It is now in the house of Mr. Franklin Woodruff; I was told that I was going to be mobbed by the same congregation that mobbed Mr. Moulton, and I took the picture out of the house and sent it to his for safe-keeping.

#### THE PROPOSED HELP OF ANOTHER FRIEND.

Q. Did Mr. Moulton communicate to you, Mr. Tilton, the fact that some friend had proposed to make an advance of \$5,000 in aid of your necessities, or those of your newspaper? A. No, Sir; I never heard of any such proposition.

Q. You never heard of that? Then, before this \$1,000 was sent to you by Mr. Moulton, do you mean to say that you had not been made aware that some friend or well-wisher of yours had proposed to Mr. Moulton a loan of something like \$5,000? A. No, Sir; Mr. Moulton informed me that a friend of his and mine had proposed a loan of \$1,000; and I objected to it.

Q. Then this transaction, which Mr. Moulton has testified to, of a proposition of a friend to make this advance, had not been communicated to you? A. I do not remember any such proposition, Sir, of \$5,000; I remember Mr. Moulton speaking to me of a friend who had, through him, desired to contribute to the capital of *The Golden Age* \$1,000.

Q. Yes; well? A. I remember that, but I do not remember any proposition of \$5,000 from anybody.

Q. Did that precede this advance of the \$1,000? A. I do not remember when it was made; I do not think that I was informed of it at the time; I think intelligence was brought to me of it afterwards in casual conversation.

Q. Then I understand you that the transaction which Mr. Moulton has testified to, of somebody's proposition of \$3,000 or \$5,000, or any sum, which he had told Mr. Beecher you could not properly accept—that that transaction never became known to you? A. I never heard any transaction in that amount, Sir; I only know the proposition of a friend to contribute \$1,000 to *The Golden Age*; I never heard of anything else.

Q. Now, when was that? A. I do not remember the date at all.

Q. Well, who was that friend?

Mr. Fullerton—I think it is not worth while to go into that; we object.

Mr. Evarts—I don't know anything about this transaction; I want to inquire about it.

Mr. Fullerton—Your not knowing anything about it does not make it evidence.

Mr. Beach—I don't know why the counsel should know anything about it.

Judge Neilson—Probably it is the same thing that we had up before.

The Witness—Precisely the same, Sir.

Mr. Evarts—I don't know that; it certainly is a different sum.

Judge Neilson—On that occasion we took some pains to exclude the names; at least, I recommended that and you acquiesced.

Mr. Evarts—The difficulty is that this witness has put this in the place of that transaction, and not as that transaction; I have endeavored to get from this witness whether that transaction, concerning which Mr. Moulton testified, had been communicated to him.

Mr. Fullerton—Oh, no.

Mr. Evarts—And I understand that he rejects that, and does not believe that he ever heard of it.

Mr. Fullerton—Oh! no, no.

Mr. Evarts—How do I know but this is the same transaction with the \$3,000 which Mr. Moulton spoke of?

Judge Neilson—It is utterly immaterial whether it is or not.

## MR. MOULTON'S TESTIMONY QUESTIONED.

Mr. Evarts—That is another view, if your Honor please, whether it be material or not. I am entitled, I assume, to show whether or not Mr. Moulton's statement of that transaction, as communicated to him, and his answer to it—if that occurrence took place. Now, if he admits the transaction in the shape that Mr. Moulton puts it, that is very well—that is the end of that; but he does not; he excludes it entirely and interposes some other transaction entirely different in its features.

Judge Neilson—He says that no \$3,000 transaction was communicated to him.

Mr. Evarts—The question was only whether it was \$3,000 or \$5,000. However, we will not repeat the testimony; it is all written down. Now, on this cross-examination, this \$1,000 may or may not stand as a substitute for this other transaction; but it is for me to find out whether it does or does not.

Judge Neilson—You have just got the information from the witness on that \$1,000 transaction.

Mr. Evarts—Not definitely.

Judge Neilson—Well, add to its definiteness, and let us see what it is.

Mr. Evarts—I have Mr. Moulton's testimony concerning a large sum of money, and that he communicated the facts about it to Mr. Beecher, and communicated Mr. Tilton's dealing with the proposition to Mr. Beecher.

Judge Neilson—The witness does not recollect that transaction at all, but he does recollect a proposition of \$1,000; I may be mistaken; it may be the same transaction or it may not; in either event it is utterly immaterial; it is a suggestion not carried out—a bare suggestion—a naked suggestion—a fruitless suggestion, utterly fruitless. However, interrogate him if you attach any importance to it.

Mr. Evarts—It certainly is material whether Mr. Moulton has stated the truth about it or not.

Mr. Fullerton—The counsel on the other side is laboring under a very grave mistake in regard to the evidence in this case as it now stands. Mr. Moulton testified that there was a proposition made by a third person to contribute \$1,000 to the capital of *The Golden Age* through him; that he communicated that proposition to Mr. Tilton, and it was rejected, and that the note was sent back—the note for \$1,000 returned to the person making the proposition. Mr. Tilton has, within the last few minutes, stated to the counsel on the other side that that was the \$1,000 of which he has been at present speaking; so that the two transactions are identical; there can be no doubt about that. Now there never has been any proposition to contribute \$3,000 to the capital of *The Golden Age* by anybody; no such sum has ever entered into this testimony, except what was incorporated into a question put by the counsel on the other side during the present cross-examination, is that the proposition made by Mr. Beecher to contribute to *The Golden Age* is entirely different from the proposition of the other person to contribute \$1,000.

Judge Neilson—Separate and apart. Go on, Mr. Evarts, we will see.

Mr. Evarts—My inquiry is, from whom this \$1,000 proposition you speak of came?

Mr. Fullerton—That is objected to, because it did not come from Mr. Beecher.

Judge Neilson—Then it is immaterial, utterly immaterial, and rule it out; there should be an end somewhere.

Mr. Evarts—If your Honor please, is it to be held that it is immaterial for me to show that Mr. Moulton's statements in regard to the matter were not the truth?

Judge Neilson—This matter about the \$1,000 is utterly immaterial; I rule out your last question; that is the extent of my ruling.

Mr. Evarts—If you Honor please, note my exception to your ruling.

Mr. Evarts—When was this proposition of the \$1,000 advance made to you? A. I cannot fix the exact date; all I know about it is what Mr. Moulton told me; that is very indistinct in my recollection; I never knew anything about it of my own knowledge at all.

Q. What did Mr. Moulton tell you? A. I don't remember that very distinctly, except that the substance of it was that a friend of his and of mine had proposed through him, in a delicate way, to buy a share of *The Golden Age* to the amount of \$1,000, and I rejected the proposition; that is the substance of it, Sir.

Q. And that was anterior to the receipt of this \$1,000 that Moulton sent you? A. Well, I cannot fix the date, Sir.

## MR. TILTON'S PURPOSE IN THE BACON LETTER.

Q. When you wrote the letter to Dr. Bacon, Mr. Tilton, what had occurred in reference to this scandal, so-called, that induced you to write that letter? A. There had occurred a series of measures in Plymouth Church detrimental to me; there had occurred a council growing out of these measures, wherein Plymouth Church was arraigned, and there had occurred a defense on the part of Plymouth Church to that Council, which represented me as having brought dishonor on the Christian name, whereas it was another man that had brought such dishonor.

Mr. Evarts—We will not go into that now.

The Witness—And there had occurred a public lecture by Dr. Bacon, the moderator of that Council, when he went home, after the Council was adjourned, and he said publicly in New-Haven, summing up the results of the Council, that I was a knave and a dog, and Mr. Beecher the most magnanimous of men; and there had occurred also after that a series of articles in *The Independent* by Dr. Bacon, five or six in number, emphasizing that idea. There had occurred also a public insult to Mrs. Tilton and me by Mr. Thomas G. Shearman, clerk of Plymouth Church. There had occurred also an apology by Mr. Shearman to me, and there had occurred a proposition on my part towards Mr. Beecher, that this mischief which Dr. Bacon had done to me should be corrected by Mr. Beecher; and there had occurred an interval of three months wherein he had taken no measure to correct it. Then I corrected it myself by writing my letter to Dr. Bacon. All



these measures are set forth in the letter to Dr. Bacon, now in evidence.

Q. Now, did you regard your letter to Dr. Bacon as disclosing an imputation against the honor of your wife and your children? A. I did not, Sir; on the contrary, I took particular pains in framing my letter to Dr. Bacon to speak in complimentary phrase of my wife; and I intended that letter, while vindicating me, should also vindicate her.

Q. You did not then consider that letter as carrying any imputation upon the honor of your wife or of your family? A. I did not, Sir; on the contrary, I considered it carried her vindication and mine also, and I think, if you refer to the letter, you will see that it does.

Q. Well, that is your view of it. As I understand you, the object of writing that letter was your own vindication? A. Yes, Sir.

Q. Against the imputations that had been thrown upon you in the various ways that you have suggested? A. Yes, Sir.

Q. Did you regard Mr. Beecher as in any way responsible for this Council that had been got up against his church? A. The Council was got up with reference to actions in Plymouth Church which he might have controlled and suppressed.

Q. And which you think he did not, when he might? A. Yes, Sir; I think he did not.

Q. And in that way, then, you think he is responsible for the Council? A. Oh! I don't know how to trace responsibility for a public body, to any individual man.

Q. Do you think Mr. Beecher was responsible for any of Dr. Bacon's speeches or articles in *The Independent*? A. Mr. Beecher had given the occasions concerning which Dr. Bacon wrote them, and in that degree he was responsible.

Q. How do you mean the occasions? A. Mr. Beecher's affairs; Mr. Beecher's crime; Mr. Beecher's measures against me in the Church; Mr. Beecher's defense before the Council, which was to my detriment—all those together were the text of Dr. Bacon's articles.

Q. What measures against you in the Church had Mr. Beecher taken? A. Mr. Beecher, as I have just said, was arraigned before the Council—practically, morally—and his defense was a paper presented before the Committee, the essence of which was that my retirement from the Church should not fling a shadow on the Church, because I had brought dishonor on the Christian name. They had given me no letter of recommendation, they said. If you will read the documents sent by Plymouth Church to the Council you will see Mr. Beecher vindicated himself at my expense.

Q. Where is this paper of the Church, as you say, or of Mr. Beecher, that takes any such grounds as that? A. I presume it is in Mr. Shearman's tin box.

Q. Are you speaking of the action of the Council? A. No, Sir; I am speaking of the documents which Plymouth Church itself sent to the Council to be its own vindication in that body. It was an unmanly vindication, by striking me.

Q. Very well; you thought, then, that this vindication of Plymouth Church before the Council carried an imputation upon you? A. I know it did, Sir.

Q. That was your opinion at the time? A. No, Sir; Dr. Bacon

took it up and quoted it in his letter, and threw it at me as straight as an arrow to a mark. Dr. Bacon said, in so many terms, that Plymouth Church accused me of bringing dishonor on the Christian name.

Q. I know what Dr. Bacon said, but I am trying to find out what Mr. Beecher said? A. Oh, then, you must ask him. [Laughter.]

Q. What was there in that situation that made Mr. Beecher responsible for any of those offenses against you that you find in Dr. Bacon's letter? A. I will tell you, Sir. Mr. Beecher came out of his church one night, as I have described in my direct examination, meeting Mr. Moulton and me against the iron rail—

Q. Well, we have had that once. A. Saying he could control his church; that they would do exactly what he wished; that he held them in his right hand, and any action which Mr. Beecher had designated for Plymouth Church to do, as necessary to this case, Mr. Shearman and the other managers would have done. Mr. Beecher was thoroughly and absolutely responsible. They would have done anything he said.

Judge Neilson—At any rate, that is the view you took? A. Yes, Sir; that is the view I took.

Judge Neilson—Those were the motives of the witness in writing it, whether he was mistaken or not.

Mr. Evarts—That was your view? A. Yes, Sir.

Q. That those slurs upon you could have been prevented by Mr. Beecher, and were not? A. I know they could have been; yes, Sir.

Q. And were not? A. Yes, Sir; and were not.

Q. And that was the offense of Mr. Beecher? A. No, Sir, that was not the whole offense of Mr. Beecher; it was part of it.

Q. I mean in this connection, as against you? A. If you read the Bacon letter you will see the whole volume of it set forth. It is not an offense which one phrase of a sentence can carry. It was an offense of great magnitude, many incidents in detail, stretching through four years.

Q. You mean to say that, during the whole four years, you have understood Mr. Beecher to be ready or desirous to fasten affronts upon you, and cause irritation with you? A. No, Sir; I don't think he was ever ready or desirous to do that. I think that, perhaps, his wish was to the contrary; but he was in the midst of a Church which he might have controlled, but which he had not the courage and the nerve to control. He is the unwitting author of his own exposure.

Q. Then you don't impute, or didn't impute, in your opinion any design on his part in this relation, but inability or want of courage to exercise a will that he might have exercised? A. I think in the year 1871 and 1872 it was mere lack of courage; I think that later Mr. Beecher felt that, as soon as the opportunity was safe in which he could turn upon me and strike me down, he meant to do so. That is my judgment. I submit it with deference.

Q. How early did you come to that latter conclusion? A. I came to that conclusion after my last interview with Mr. Beecher, in Mr. Moulton's study, in which I gave him the opportunity to rectify the mischief which the Council had done,

and which Dr. Bacon had done, and which the Church had done; and during the three months which followed, when he did nothing, I came to that conclusion, that Mr. Beecher was going to turn upon me, to strike me, and I then said to myself: "The time has come in which I must defend myself against him and the Church," and hence the Bacon letter.

Q. And you then resolved, did you not, that you would vindicate yourself, no matter what happened about the scandal, or your wife and family? A. No, Sir; I then resolved that I would vindicate myself, and I sought my wife's vindication in mine; and the Bacon letter includes my wife's vindication in mine, like a jewel set in a ring, with honor and praise. I never sought any vindication at the expense of Elizabeth.

#### MR. TILTON'S LETTERS TO THE COUNCIL.

Q. Did you write letters to the Council when it was in session? A. Yes, Sir; I wrote two.

Q. On your examination before the Committee of the Church, were you asked this question, and did you give the answer that I will read: "You knew that the effect of your letters to the Council would be to revive the scandal, did you not? A. No, I did not; I wrote them to vindicate myself. I did not care whether they revived the scandal or not." A. I don't remember that.

Q. Were you then asked this question, and did you make the answer which I will read: "Didn't you know what the effect would be? A. I thought of vindicating myself. I had been attacked, and I wrote a defense. The scandal had to take care of itself. I was not so tender toward the scandal that I should refrain from defending myself, if it would revive it even?" A. I don't remember the phraseology.

Q. Did you make statements equivalent to those? A. I don't remember.

Q. Do you remember, when you were before this Committee, this question being asked you: "Have you the letters here? A. No, Sir?" A. I don't remember that.

#### MR. TILTON'S DISTRUST OF THE COMMITTEE.

Q. Then this question being put to you: "I thought that you were to bring them? A. All the originals from which I have quoted I will carry before Judge Reynolds, or any Judge, in the presence of General Tracy. I have great confidence in you, gentlemen, but I don't propose to produce the originals here. If you will release one of your number to go with me before any magistrate I will produce them; Mr. Moulton will, of course, be asked to produce his for examination, line by line; I do not suppose you would snatch them away, or keep them, but at the same time, I propose that if you would see the originals General Tracy should go with me." Do you remember that? A. I don't remember proposing that General Tracy should go with me; my idea is that I asked that Mr. Winslow might go; that is my recollection, still I may be wrong about it.

Q. Subsequently I think it was arranged that Mr. Winslow was to go? A. Yes, Sir.

Q. But that is not my present point. Do you think you were

asked that question, and that you made that answer? A. I remember not exactly the question, nor exactly the answer, but something like that. In other words, I remember telling those gentlemen, in substance, that I was there, one man, alone, without counsel, without a secretary, without a friend, and I had been warned not to take those papers down among those gentlemen, and I told them so frankly to their faces.

Q. Then you do not remember the principal fact, that you didn't have the letters there, and that you refused to bring them there, and put them before them? A. Why, Mr. Evarts I took the letters there before my examination was concluded. I was there four or five days. On one of the days I took before that Committee as large a bundle of letters as we brought into the church—yes, as large as *that*. [Indicating.]

Q. You receded, you mean, from this position which you took? A. Well, those gentlemen seemed to think that I had entertained an erroneous notion, that they were not unfriendly to me but friendly. Mr. Claflin, I think, said that the letters would be all safe; I don't know but Mr. Tracy said the same thing. At all events, I think Mr. Tracy asked me to recall the remark, and I said: "Very well, I will do it; I will bring you the letters."

Q. And then you brought them there in bulk? A. Yes, Sir.

Q. At a subsequent meeting? A. Yes, Sir.

Q. On this appearance before the Committee of the Church or Society were you asked this question and did you make this answer: "You have brought forward the letter of your wife where she describes herself as having received new light, as having read the character of Catherine Gaunt in Griffith Gaunt. Have you read the character of Catherine Gaunt? A. Yesterday I said no, but I have an impression that I have. A friend of mine yesterday morning said 'it is a singular result from a Terrible Temptation.' Charles Read has written a book called 'A Terrible Temptation.' I have never read that book, but, on second thought, I think I have read 'Griffith Gaunt.' My impression is that I wrote something to Elizabeth about it, and asked her to read it." Were you asked that question, and did you make that answer? A. I think something like it.

Q. Were you then asked this: "Did you think that the guilt of Catherine Gaunt was adultery? A. I had no idea that I did." A. I think quite likely I did.

Q. On this examination were you asked this question, and did you make the answer that I shall read? "Did Mrs. Woodhull know of the antipathy of Mrs. Tilton to her? A. Yes, Sir; you could see it in the woman's eyes; they flashed fire. The moment they saw each other their eyes flashed fire?" A. That was true, Sir, of one special occasion.

Q. Did you make this answer? A. I don't think I made it as it stands there. I think I gave a narrative of one particular occasion to which it referred. It was only true in one instance.

Q. Were you ever asked this question immediately following: "It was perfectly evident, then, when the women came together, that they were thoroughly antagonistic? A. Oh! yes; thoroughly?" A. It was true of that occasion; yes, Sir.



Q. I ask you if you made that answer? There is no occasion that I know of. A. Well.

Q. Then, were you asked this question: "Bitterly so? A. I cannot say that Elizabeth had bitterness. She had a certain strong, moral and religious repugnance." Were you asked that question, and did you make that answer? A. I think quite likely.

Q. Were you asked this question before the Committee, and did you make this answer: "You say that you have not reported this scandal to the Woodhull women or woman, but you do not deny that you had frequently spoken harshly of Mr. Beecher to her? A. Oh! Not harshly; I have spoken critically of him, but always with a view to have her do no harm to him. I expressed my opinion about it." A. I don't remember that, Sir.

Q. Can you say that you were not asked that question, and that you didn't make that answer? A. I have said I don't remember anything about either question or answer.

#### THE SURREPTITIOUS PUBLICATION OF MR. TILTON'S SWORN TESTIMONY.

Q. Mr. Tilton, the proceedings of this Committee, at the time that you appeared before them and presented a statement, were secret, were they not? A. No, Sir; they were published every day in *The Brooklyn Eagle*.

Q. When did you publish—did you make public your sworn statement that you made before that Committee—that you presented to that Committee? A. You ask me when did I?

Q. I asked you if you did? A. No, Sir, I did not.

Q. When did you know of its being in a public newspaper? A. I was in New-York on the night of the day when it appeared in Brooklyn, if you remember what day that was—I think July 20 or 21. Was it July 21? I was in New York, up town, at Delmonico's, with several friends, and in the evening, I think about nine or ten o'clock, a telegram was sent up there to one of those gentlemen there, he being the editor of a newspaper, that this publication had been made. That is the first knowledge I had of it.

Q. Was it the very day that you had presented it to the Committee? A. No, Sir; it was the next day.

Q. The next day? A. Yes, Sir.

Q. Had you given a copy of it for publication? A. I had not.

Q. Was it published from the copy that you had presented to the Committee? A. It was not.

Q. How do you account for its publication? A. It was published by Mr. Augustus Maverick, who made the copy which I laid before the Committee. He made, unbeknown to me, a copy, as I am informed, during the very night when I was before the Committee, and on his own responsibility, and without my knowledge, but thinking to accomplish thereby my vindication before the public, he published that statement in *The Argus* of July 21.

Q. Was Mr. Maverick your friend—confidential friend? A. Mr. Maverick had been a friend of mine for many years. He was my groomsman on the occasion of my marriage.

Q. He is the gentleman who was a witness here in your cause, was he not? A. Yes, Sir.

Q. And did your friendship remain unbroken after its publication? A. It did, Sir.

Q. He was an editor, was he not, a manager of a newspaper?

A. He is the managing editor of *The Brooklyn Argus*.

Q. And was at that time? A. Yes, Sir.

Q. And that you knew? A. Yes, Sir.

Q. Mr. Tilton, were you asked before the issue of that paper, *The Argus*, containing this statement, by any one connected with that newspaper, whether the copy they had was a correct copy? A. I didn't know they had any copy.

Judge Neilson—Well, answer the question.

The Witness—What is that, Sir?

Judge Neilson—Say yes or no.

Mr. Evarts—Say yes or no. Were you asked by any one connected with the newspaper, establishment of *The Argus*, in advance of the appearance of the paper which contained this statement of yours, whether the copy that *The Argus* had and was to publish was a correct copy or not? A. No, Sir.

Q. Had you no interview of that kind in which the fact appeared that that paper had a copy and was going to publish it, and you were consulted as to whether it was correct? A. No, Sir; no such interview; no such topic; no such hint or suspicion on my part.

Q. Did you receive information that Maverick was proposing to publish it, before it was published? A. I did not, Sir.

Q. Did you receive from Mr. Moulton that night warning that Maverick would publish it? A. I did not, Sir.

Q. Do you know, Mr. Tilton, whether the copy from which Mr. Maverick made this publication bears your actual signature at the end of it? A. What is that, Sir?

Q. Do you know whether the copy from which Mr. Maverick made his publication bears your signature? A. No copy of it bore my signature, save my own original copy—save my own original draft.

Q. Then he had no copy that had your signature? A. No, Sir; he had my original draft, which he copied for the Investigating Committee, and I presume he made from that the copy which was published in *The Argus*—if it was his copy; I don't know that *The Argus* published it from his copy. I never inquired who did; I don't know who made the copy.

Q. Well, did the draft contain your signature? A. Well, that I don't remember.

Q. And did he have possession of the draft? A. He did.

A. And retain it? A. Yes, Sir.

Q. With your knowledge? A. The circumstances were these: My original draft was almost illegible from the numerous alterations in it. Mr. Maverick made a copy for presentation to the Committee. I asked him if he would make for me at his leisure during the week a copy for my own use—preservation—inasmuch as my original draft could not be read by anybody without much pain, and he said that he would come the next evening after the paper was out, and perhaps during two evenings make a clean copy for me to preserve. In that way he had the original in his possession for that use—to that end.

Q. At the time of the publication, had he the original? A.

No, Sir; he had brought it back the next morning to my house, with three or four pages copied, saying to me that he had been busy, and that he would come in during that evening or the next evening, and complete the copy. That was in order to make the deception more complete, the stratagem perfect.

Q. Was Mr. Moulton at your house the night before the publication? A. Mr. Moulton came around about twelve o'clock that night, I think, with Mr. John Russell Young. Mr. Young besought me to give the manuscript to *The Herald*.

Q. Did he come to you, or find you, at a subsequent interview later in that night—did Mr. Moulton? A. No, Sir; Mr. Moulton, Mr. Young and I were all together that night.

Q. Well, now, after that interview, did Mr. Moulton come to you later that night and see you again? A. I don't remember that he did.

Q. Between one and two o'clock in the morning? A. That I don't remember.

Q. Where were you that night? A. At my own house.

#### MR. TILTON'S HARD BATTLE TO KEEP UPPERMOST.

Q. Since you left *The Golden Age*, Mr. Tilton, what have your occupations been? A. Well, Sir, mainly struggling to live in a city in which Plymouth Church has three thousand men seeking to put me down. I have been mainly dealing with this scandal since last May, fighting for life.

Q. Have you had no avocation, or employment, or income? A. I have had no settled employment; I have had an income. My hands have been very full with this case, Mr. Evarts, ever since last May.

Q. Well; now do you— A. They bid fair to be until next May.

#### MR. MOULTON NO CONTRIBUTOR TO THE COSTS OF THE SUIT.

Q. Do you know of Mr. Moulton contributing anything towards the expense of this suit? A. No, Sir; I do not. He has never contributed anything towards my expenses in this suit; I know that.

Q. And to your knowledge he has not contributed anything towards the expenses of this suit? A. No, Sir; not to my knowledge.

Mr. Evarts—There are three letters, if you Honor please, that we asked for this morning and which we will put in evidence, and then my cross-examination will be closed. They are of some length. Perhaps they had better be read after the adjournment. It will take no more time than now.

Judge Neilson—The gentlemen of the jury will retire. Be in your places at 2 o'clock, gentlemen.

The Court then took a recess until 2 p. m.

#### MORE OF MR. TILTON'S LETTERS TO HIS WIFE.

The Court met at 2 p. m., pursuant to adjournment, and Mr. Tilton's cross-examination was continued.

Mr. Evarts—Mr. Tilton, I want to fix one or two dates. Do you remember whether the death of your son Paul was the 25th of August, 1869? A. It was not, Sir; it was in the latter part of August, 1868.

Q. I mean in 1868; I beg your pardon? A. Yes, Sir.

Q. It was the latter part of August, 1868? A. Yes, Sir.

Q. Now, whether you have given the day of the birth of your youngest child— A. I think it was the 21st of June, 1869, but I—

Q. I thought you had given it; I remember it has struck me. I believe it is the 20th? A. 20th or 21st; I always speak with some apprehension of dates.

Mr. Evarts—That is all, I believe.

Mr. Shearman—If your Honor please, I will now read some letters, Sir, from Mr. Tilton to his wife.

[Reading:]

MUTUAL CONFESSIONS GIVE PEACE TO THE HUSBAND.

HUDSON RIVER R. R., 31st-ST. DEPOT. }  
Jan. 26, 1868. }

MY DARLING:

I am housed in the sleeping car for the beginning of my westward journey. Last Winter, I began it in the morning; this Winter, at evening. On that memorable morning last Winter, I went away dispirited, and only half a man; to-night, I am full of courage, hope, and high resolve.

You have never seemed so noble to me as during last evening and this day. You are not only all, but more than all, that any man can need or ever can deserve. Life never seemed to me to be more full of objects and ends worth living for, than since our recent long interview and mutual confessions. I am by nature so frank that the attempt to hide my feelings, to cloak my shortcomings, to deny utterance to my inward sorrows, had lately driven me almost to despair.

The secret of all my long-continued moodiness has been—dissatisfaction, not with you, but with myself. I was once well enough content to be esteemed at something better than my merit, but of late all such estimates of me have been horribly repulsive to my mind. They have revealed me to myself in the character of a hypocrite, a deceiver, a whitened sepulchre filled with a dead man's bones. Above all things it has been dreadful for me to hear praises of myself from you and Florence. I could not rest content under the idea that either of you felt that my gloom was occasioned by anything lacking in yourselves, but only in my own self.

Mattie's company to the depot was very comforting. She is without her equal in her way. She is the personification of moral uprightness. You and she were formed by nature for mates. If women could marry women, you ought to marry each other. She is a strong pillar; I lean against her and feel steadied. Just as I was coming away from the office I received a present of a bottle of wine, made by the Rev. Dr. Holland, a friend of mine. I sent the bottle by Mattie to you, that you and she together might drink it when you meet, and particularly that you might drink it to my health and happiness.

The little children seemed very lovely to me as I parted from them this afternoon. I see all your faces in my mind's eye at this moment, as you appeared at the windows with tears in your eyes. That picture I shall carry with me in all my journey. And I hear myself saying my last words over again, "Peace be unto this house."

All this day has been full of victory. It has been a better day to me than any day for a long, long time past. The first nightfall of my journey fulfills the promise that "at eventide there shall be light." I am writing these lines, using for a desk the large-printed New Testament which you gave me. Florence will know where I am, when I say that I am standing in the wash-bowl nook of the sleeping-car. My berth is "number 7, lower." I wish she were to be its joint occupant with her father to-night. I believe that Alice would like sleeping-cars, for they would make her think of dolls' houses.

I hardly realize that I am outward bound on so long a jour-



ney. In fact I seem at this moment to be more in Livingston-st. than here. Since I have been in the car, I have been wondering if any of my fellow-passengers have left such beautiful families as mine behind them. I think sometimes that I have the sweetest family that God ever gave to a man. God grant that I may return to you all.

With unutterable \* \* \* I am yours "now, henceforth and forever."

THEODORE.

Mr. Evarts—"Mattie" there referred to is Mrs. Bradshaw, isn't she? A. Yes, Sir.

Mr. Shearman—From the next letter I will omit simply some private, personal matters, with the consent of counsel :

THE MUTUAL CONFESSIONS AGAIN MENTIONED.

MONONGAHELA HOUSE,  
PITTSBURG, Jan. 30, 1868. }

It is now about midnight and I ought to be snug in my bed, for I have had a hard day's and also a hard night's work. But your letter of this afternoon was so full of affection and so beautiful in the manner of its expression that I must do something for the sake of expressing my heart's feelings. I have never loved you more than now, nor have I ever had a more serene, cheerful, hopeful and patient spirit than at this very time. Our memorable interview on the evening before I left you lingers with me like a sunset in the sky ; it makes all my thoughts rosy and all my feelings pure. I seem, all of a sudden, to have grown ten years younger in hope and ten years older in strength. The knowledge of your love, your confidence, your respect, your satisfaction in me, this is more than all that the rest of the world can give, and far more than I can ever deserve.

Mr. Shearman—I will read an additional passage, the concluding passage of this letter. [Reading]:

My mind of late, or rather my heart, has gone out very tenderly toward the children. I am made more proud to be loved and yearned after by them than to be the President of the United States. But, most of all, my strongest passion in this life is to be greatly loved by their mother. Oh! my sweet wife, I have a great heart when its fountains are stirred and loose, have I not?

Affectionately thine,

THEODORE.

Mr. Evarts—That is all.

Some delay here occurred in looking for another letter.

Mr. Evarts—Mr. Fullerton, it is not necessary to delay the examination. We want this paper if you can find it, but if we have any occasion to ask the witness about it it will be an isolated matter, unconnected with anything else.

RE-DIRECT EXAMINATION OF MR. TILTON.

This closed the cross-examination of Mr. Tilton. Mr. Fullerton immediately began the re-direct examination.

MRS. TILTON'S FIRST DESERTION AGAIN DESCRIBED.

Mr. Fullerton—Mr. Tilton, calling your attention to the various letters that have been introduced, both on your own behalf and on behalf of the defendant, I desire to ask you this general question, whether they were received about the time of their respective dates? A. Yes, Sir; the only exception I now think of is in the case of Mr. Beecher's letter written to Mrs. Tilton after the Woodhull story. That was written a number of months afterwards, but I believe that has no date.

Q. No. On the cross-examination you were asked in regard to the absence of your wife some time in December, 1870, at her mother's. I think you stated that it was immediately upon

her return from the country—where had she been? A. She had been spending the Autumn in Marietta, Ohio.

Q. Do you recollect the time of her leaving to go to Marietta?

A. I can't fix the exact date.

Q. How early in the Autumn do you think it was? A. I should think it might have been the last of September—possibly the 1st of October.

Q. With whom did she remain there? A. She remained with a friend of our family, Mrs. Putnam.

Q. And, according to your best recollection now, how soon after her return from Marietta was it that she went to her mother's house? A. Well, Sir, my recollection is—although I won't be positive about it—that she returned to my house, having been brought there by me in a carriage, and that during the day she went to her mother's house, then returned and told me that her mother insisted that she should no longer live at home with me, and that she then went, either that day, or a very few days after to her mother's house.

Q. You met her in the carriage on her return from Marietta, did you not? A. Yes, Sir, I went over to the depot.

Q. And escorted her to your house? A. I did.

Q. And how did you learn of her coming? A. Why she notified me by letter.

Q. Where did her mother then live? A. 'Round the corner from my house.

Q. Were all the children taken with her to her mother's, or did some of them remain with you? A. I don't remember that any of the children were taken, except perhaps the baby.

Q. Now, will you tell us how old that child was called "the baby?" A. Well, I remember that the child could walk and talk a little baby talk—why the child was born in September—in June, 1869, and this was December, 1870; the child was eighteen months old.

Q. Yes, that is the child that you had a correspondence about, wasn't it, where you wrote a peremptory order for the nurse? A. Yes, Sir.

Q. To bring it home? A. The little boy Ralph.

Q. How long did she remain away at her mother's at that time? A. Well, my recollection is, only two or three days; I don't know that she remained as long as that. During that interval I think she went to New-Brunswick, New-Jersey, to make a visit to my daughter Florence, who was there at school. My recollection is that during Mrs. Tilton's absence in New-Brunswick I sent for the baby, not being willing that the baby should be in the hands of Mrs. Morse.

Q. Well, beyond saying that her mother insisted upon it that she should not live there any longer—was there anything said indicating an intention upon her part to remain permanently away?

Mr. Evarts—This is an inquiry for conversations between husband and wife, which I have not gone into.

Mr. Fullerton—Oh, yes; you did go into them.

The Witness—No, Sir; I don't remember any such thing as that.

Q. How long before she returned? A. She returned from New-Brunswick a few days before her sickness; her sickness

was dated—her sickness occurred on the 24th of December; she returned from New-Brunswick just a few days before that.

Q. How long was she absent from your house, after leaving it, before she returned? That was my question. A. Well, Sir, only a few days; I can't say how long; I have no means of fixing the date.

MRS. TILTON'S SECOND DESERTION.

Q. Well, your attention has been called to an absence of hers from the house on the 6th of July, I think it was, 1874. Do you recollect that—when she went to Mr. Ovington's? A. The 6th of July—if that be the date at which she went before the Committee, then the circumstances are fresh in my mind.

Q. That was the date to which Mr. Evarts called your attention as the day which she left? A. My impression is that there is a little confusion in the evidence as to whether she went before the Committee on the 6th or 8th. Which date was it, the 6th or 8th?

Mr. Evarts—The eleventh she left.

Mr. Fullerton—Very well; it is a misprint then—whatever day it was in July, 1874, when she left your house. A. Oh, Sir, that was July 11, Saturday.

Q. Well, I want to call your attention to that evening, and state what occurred when she did leave? A. She left at six o'clock in the morning, or between six and seven, telling me that she was going to leave me permanently, forever. I was greatly surprised at the announcement; I had not yet risen to the—; in fact, I was waked out of my sleep in order that she might deliver that message to me. She left, saying that she was going to the Ovingtons. I rose and went down there myself; made a call; took breakfast with the family.

Q. Well, now, was she the day before at home? A. Yes, Sir.

Q. And the evening before? A. Yes, Sir.

Q. Had she expressed any determination to leave on the day or the evening before? A. Not the slightest.

Q. This took you, you say, by surprise? A. Yes, Sir; the greatest surprise I ever had in my life, except one.

Q. Well, had she spent that night in your house? A. She had.

Q. Was she dressed in the morning when she announced this to you? A. Yes, Sir; bonnet and gloves.

Q. Did you know that she had been in the act of dressing prior to her appearing before you? A. I did not, Sir.

Q. Had you any intimation, directly or indirectly, up to that moment, that she intended to leave you? A. Not a shadow of it.

Q. It had not been foreshadowed by any word or act on her part? A. Not in the slightest degree.

Q. How long was that after she had been before the Committee? A. She had been before the Committee on a night of that same week, either Monday, July 6th, or Wednesday, July 8th. I don't think that day has been definitely fixed in the evidence, and it is not definitely fixed in my mind.

Q. Did you know that she was going before that Committee? A. No, Sir.

Q. When she went—did you know of the existence of her

Committee at the time that she went before it? A. No, Sir; I had never heard of any Committee.

Q. It was done secretly then, and without your knowledge? A. Yes, Sir.

Q. And from whom did you learn what took place before that Committee, when she was before it? A. I learned first from her own report on the night when she came back. Afterward, I learned from Gen. Tracy.

MRS. TILTON'S RELIGIOUS SENTIMENTS HER FATAL ENEMY.

Q. Now, Mr. Tilton, I want to ask you with reference to Mrs. Tilton, and as to the facility with which a person with whom she was well acquainted, and whom she admired, would influence her action. What was her disposition in that regard? A. She was an extremely sympathetic woman, taking the ideas of others readily—not that she lacked ideas of her own—ready to yield to advice. If I understand your question, Sir, that is the answer to it.

Q. Yes, Sir, that is it? A. Yes, Sir, that was her characteristic in an uncommon degree.

Q. Would she be the more readily influenced if her religious feeling or sentiment was appealed to? A. Yes, Sir.

Q. And you think she would the more readily yield if she thought her action would promote the cause of religion? A. Yes, Sir.

Q. In the view that she took of it? A. Yes, Sir.

Q. In answer to a question put by Mr. Evarts with regard to your wife, you answered, "I think my wife loves everything good and hates everything bad, and I believe to-day she is a good woman." Now, Mr. Tilton, I want to ask you the foundation for that belief in view of this charge which has been preferred against your wife—in other words, how you reconcile that statement of yours with the fact that she is charged with adultery? A. Well, Sir, that is a sad question.

Q. Well. A. I can answer only for my own judgments of her behavior, not for other people's opinions. You must remember, Sir, that I knew Elizabeth when I was ten years old; that I became her confessed lover at sixteen; that I was married to her at twenty; and that, for fifteen years of her married life, I held her in my reverence perhaps almost to the point of making her an idol of my worship; and when she came to her downfall, it was the necessity of my own heart—I must find some excuse for her; other people might blame, but I must pardon her. I found that excuse in the fact that she had been wrapped up in her religious teacher and guide; she had surrendered her convictions to him; she followed his beck and lead trustingly; she would go after him like one blinded; I think she sinned her sin as one in a trance; I don't think she was a free agent. I think she would have done his bidding if, like the heathen priest in the Hindoo-land, he had bade her fling her child into the Ganges or cast herself under the Juggernaut. That was my excuse for Elizabeth. May I add another word, Sir?

Mr. Fullerton—Yes, Sir.



## THE BIBLE PROPOSED IN EVIDENCE.

Mr. Tilton—Where is the Bible? [The book handed to the witness.] I will give you a better answer, Sir, than my own, if I can find it. [Searching in the book.]

Mr. Evarts—I think I must object to this, if your Honor please. The witness is apparently proceeding to read a portion of the Sacred Scriptures.

Mr. Fullerton—Well?

Mr. Evarts—It does not strike me—

Judge Neilson—Do you think that would be incongruous?

Mr. Evarts—It gives us a right to put in the whole book, if he reads a part. [Laughter.]

Mr. Fullerton—Well, Sir, that would bring on your own condemnation. Well, never mind, Mr. Tilton.

[The book was closed and laid away.]

## THE DIFFERENCES CAUSED BY THE CLEVELAND LETTER.

Q. The next subject to which Mr. Evarts called your attention was this political difficulty between yourself and Mr. Beecher, and to the Cleveland letter. In what was your protest, as you termed it upon your cross-examination, published—the protest to that Cleveland letter. A. Published, Sir, in *The Independent*, immediately after the publication of the Cleveland letter.

Q. Did that lead to any alienation between you two? A. I think not, Sir.

Q. After the publication of the Cleveland letter and your protest, was your intercourse as friendly as it ever had been? A. As far as I now remember.

Q. Now, in what respect did you disagree with the sentiments expressed in the Cleveland letter, which was read here in evidence? A. Do you ask me, Sir, the grounds?

Mr. Beach—What was the point of difference?

Mr. Fullerton—Yes; the point of difference between you and Mr. Beecher. A. Why, Sir, it was a very manifest one.

Q. State it, if you please? A. In order to make it plain, you must go back to the political situation in the year 1866, must you not?

Q. Yes, Sir. A. Mr. Beecher and I were members of the Republican party. *The Independent*, of which I was then the editor, was, if I may be allowed to say so, one of the most conspicuous, and perhaps also one of the most reliable mouthpieces of the Republican party. I was bound in honor to illustrate and defend the views of that party, inasmuch as I was the custodian of one of its great journals. Mr. Beecher's Cleveland letter was an offense against the Republican party, and that offense consisted in this fact: He recommended in the Cleveland letter the restitution of the Southern States to their representation in Congress without the prefixing of any conditions to secure the liberty of the negroes, by whose aid we had conquered the Rebellion. For instance, the position of the Republican party was this: we had just ended a revolution in which the Free States had conquered the Slave States. The question was, what shall be the terms imposed by the conquerors on the conquered. The Republican party said: "We will ad-

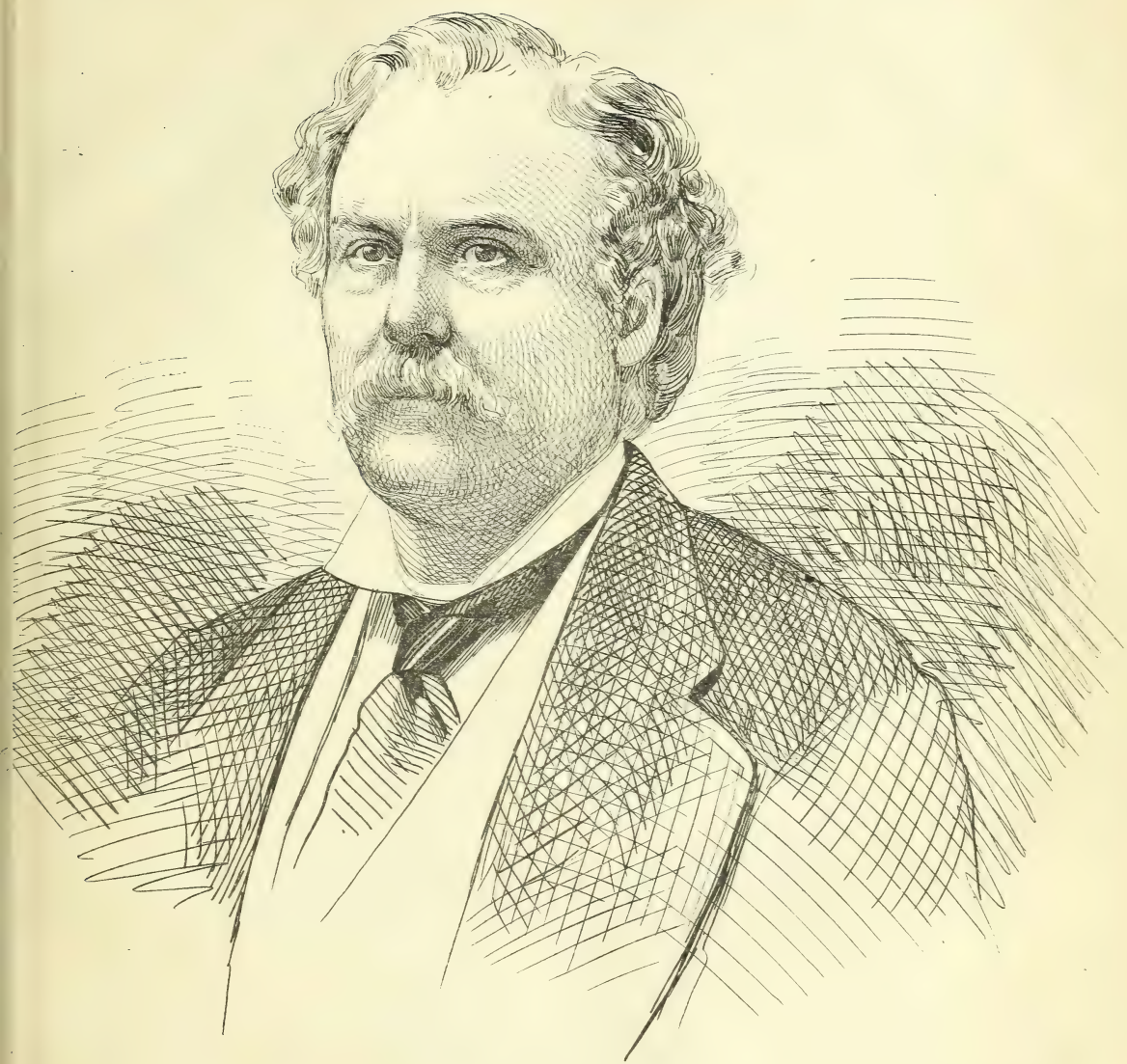
mit the Southern States on certain conditions, namely—they must blot out every ordinance of secession, they must repudiate the rebel debt, they must acquiesce in the Constitutional Amendments abolishing Slavery, and they must secure to the negro the elective franchise." The Republican party made all those conditions. The Republican party said to the Southern States: "Accept these conditions, and then you may return to Congress." Mr. Beecher, on the contrary, and the fragment of the party that he represented, said: "No; return to Congress first and then settle the conditions afterwards." The point of dispute between Mr. Beecher and myself, or rather, I may say, between Mr. Beecher and the Republican party, at that time was simply this: he wanted the Southern States to come back without conditions, and we wanted the Southern States to come back with conditions, the main and central condition being the right of the negro to his franchise.

Q. Now, Mr. Tilton, won't you step down and look at that, and say whether it is your protest? You can do that better than I can carry it to you. [Referring to a bound volume of *The Independent*.] A. [Looking at the article.] Yes, Sir.

Mr. Fullerton—I propose to read that in evidence [Reading]:

## MR. BEECHER.

With profound surprise and grief, we have read Mr. Beecher's letter to the Cleveland Convention. Our friends will find it in another column. Would to God it needed no other commentary in this journal than a regretful silence! But a sense of duty constrains us to accompany its publication with a solemn protest against the public course to which it commits its author. This letter quenches our last hope that Mr. Beecher was to unite with the friends, instead of the enemies, of his country. We know and love him well. No man's motives are purer; no man more affectionately reveres his native land. But, under the spell of an unhappy blindness which has rested on his eyes for a year past, he has done more injury to the American Republic than has been done by any other citizen except Andrew Johnson. We had secretly cherished the conviction that Mr. Beecher, during his last few months of silence concerning public affairs, had been a sad and thoughtful witness of the mischievous policy of the President. We could not force our mind to believe that, in the great civil struggles of the approaching Autumn, the minister of Plymouth Church would be found on the side of Clement L. Vallandigham, the pirate Semmes, and the murderers at New-Orleans. Of course, Mr. Beecher loathes these men; of course, his letter is in a loftier and purer strain than the common tone of Copperhead politics; but the humiliating fact remains, that Mr. Beecher deliberately and officially, under his hand and seal, has entered into league and covenant with the Johnson party; a party whose only hope of victory is by a league of traitors against loyal men. This is Mr. Beecher's position! It is a solemn hour for the nation. "He that is not for us is against us." By Mr. Beecher's past record, by his inherent sympathy with universal liberty, by his ancient scorn of treachery in public men, he belongs to the loyal party from whom, like a self-dishonored leader, he has become a voluntary deserter. Mr. Beecher's public attitude at the present moment is the attitude of a man who is putting a great reputation to the ignoble use of debasing his country. If, in view of this awful fact, this journal were to lend through silence a seeming acquiescence, or even an implied palliation, we would justly be held an accomplice in the guilt. Since the case, therefore, compels us to speak, we have no other alternative than to choose the strongest possible words of condemnation. We have only to add that if any of Mr. Beecher's friends, or of our own, shall



William Fullerton





feel pain at reading this protest, let them imagine the greater pain of writing it.

Q. I understand you now that that article did not break up your friendly relations at all? A. No, Sir; not in the least. Mr. Beecher felt hurt and sore, but we met and conversed as we had done before. It did not occasion any cessation of our friendship.

Q. Were you present at any time after the writing of that protest in the Academy of Music, when Mr. Beecher addressed an audience upon the subjects embraced in his Cleveland letter? A. I have an indistinct recollection of a speech which Mr. Beecher made at the Academy of Music, at the close of which I was called out to make a reply, but the speech and the reply are filmy before my mind, and I do not bring them up readily. I do know, however, that Mr. Beecher made a very elaborate oration at the Academy of Music, in which he substantially receded from the position taken in the Cleveland letter, a position to which he was pushed by the great mass of the Republican party, and by the powerful pressure in his own church, and by, I believe, the public prayers in his behalf of Mr. Shearman, the Clerk of the church. [Laughter.]

#### MR. BEECHER AND MRS. TILTON LEADERS IN THE RANKS OF WOMAN'S RIGHTS.

Q. Now, Sir, we come to the subject of Woman's Rights, or Woman's Suffrage, and you were asked how early you took part in movements in reference to those subjects. Your reply to that question called attention to something that occurred at Plymouth Church. Do you know what Mr. Beecher's views were on those subjects? A. Oh, Sir, Mr. Beecher's views on the subject of Woman's Suffrage were expressed, I think, earlier than almost any public man of equal rank and fame in this country. He was always a chosen leader and favorite orator of that movement, ever since the movement had any head or front.

Q. And what part did Mrs. Tilton take, if any, in regard to that matter? A. Mrs. Tilton was a very active agent in the management of that cause in the City of Brooklyn. When the great meetings were held here, at the Academy of Music, over which Mrs. Field presided, and at which Mr. Beecher spoke, Mrs. Tilton was generally the Committee of Management, sometimes the head of the Committee on Resolutions; and when the American Woman's Suffrage Society was founded, of which Mr. Beecher was the President, Mrs. Tilton was the one and only representative in the officership of that society for the whole State of New-York.

Q. When did she first avow her sentiments upon those subjects, do you know? A. Oh, Sir, many years ago; before I did. It was she who inspired me to take those views. They are correct views, Sir.

#### MR. TILTON'S VIEWS OF MARRIAGE AND DIVORCE.

Q. Your attention was also called, Mr. Tilton, to the subject of the liberality of divorce and the looseness of marriage. I want to ask you what your views are on that subject? A. Well, Sir, that is two subjects. Looseness of marriage is one thing, and liberality of divorce is quite another.

Mr. Beach—Well, upon both subjects.

Mr. Fullerton—Upon both subjects. Take them in order, if you please.

Mr. Evarts—If your Honor please, the only pertinency of these inquiries was in respect to the relations of this gentleman with his wife, from this discord in their social and religious opinions. Now, as the testimony shows that was an occasion of discord, it certainly is not of the least consequence what his present opinions are on any subject of morals or ethics. The question, I say, becomes pertinent only as its creating discord of sentiment between him and his wife, which has been abundantly proved out of his own testimony.

Mr. Fullerton—Well, Sir, the gentleman is laboring under a misapprehension in regard to it. He undertook to prove what the witness's views were in regard to these subjects—I suppose for an entirely different object—and I have no doubt that these views, as he regards them, will be used for a different purpose hereafter. It certainly is competent for us to show, in reply to what they have shown, what his views really were, at the time, upon these two subjects.

Judge Neilson—In the way of correcting the impression that might have arisen on their examination.

Mr. Fullerton—Certainly, Sir.

Mr. Evarts—Where is the cross-examination?

Mr. Fullerton you will find it commencing at page 463.

Mr. Evarts—This cross-examination, which seems to be the basis of the present inquiry, arises in this way:

Q. Now, Mr. Tilton, at what period, if at all, did you entertain discussions in any public print of which you had control, of the new social opinions and views in regard to the regulation of the social connections of the sexes? A. Well, Sir, will you tell me a little more distinctly what you mean by the new social opinions?

Q. Well, I do not wish to give it an opprobrious name, nor do I wish to characterize it improperly; but the opinions that concern greater freedom in respect to marriage, and its dissolution, and its maintenance only during continued attraction and affection, and not permanently if those sentiments had changed?

Then he gives an answer which certainly is no basis for this inquiry; and so on. Then I give the sentiments as he published them in his newspaper—my point being, not what his opinions were, if he had secret opinions, but as to the opinions that he promulgated; and I proved them by their promulgation. There are several aspects, no doubt, in which this proof is pertinent; but it has to do with the public position that this witness took on the subject, and which I have proved by his publications. Now, my learned friend, as I understand, asks him what his real opinions were at that time. That is quite immaterial if they were different from his published opinions; and if they were the same as his published opinions, why then, of course it is immaterial.

Judge Neilson—I suppose they intend, in some degree, to qualify or illustrate.

Mr. Evarts—How would it qualify the publication of them to have it said that he now entertains different views?

Judge Neilson—I don't say it would.

Mr. Evarts—If they will show a publication that qualifies them, that would be in the line of inquiry which I pursued; that would be legitimate, no doubt.



Judge Neilson—I think there is a deeper sense, a much deeper sense, in all that testimony, if I understand your theory, that perhaps goes to the moral status of the witness.

Mr. Beach—Exactly.

Judge Neilson—His integrity.

Mr. Beach—Exactly.

Judge Neilson—A departure from what seems to be the proper state in which a man's heart ought to be; and possibly that might be the subject of inference which this may explain.

Mr. Evarts—But even then we have a right to infer from the publications of his views.

Judge Neilson—Undoubtedly.

Mr. Evarts—Which I have given in evidence. Now, to show that his real opinions were different from his publication of them would not tend to reinstate, in regard to weight.

Mr. Fullerton—I don't propose to prove that his real opinions were different from his published opinions at all; that is not my object.

Judge Neilson—I will take it, Sir.

Mr. Evarts—Your Honor will be so good as to note my exception.

Mr. Fullerton—Now, Mr. Tilton, will you go on and give us your views in relation to marriage.

Mr. Beach—As they existed at that time in these publications which have been given in evidence upon the other side.

The Witness—Well, Sir, I have never since I can remember, since I came to the years of having any thoughts at all, entertained any other views on the subject of marriage and divorce than those which I will express now very briefly. First, as to marriage, I hold concerning it the one common opinion entertained throughout all Christendom—held, I believe, in all civilized society, by all good men and women—that it is the union of one man and one woman for life, for better or worse, through storm and calm—not only for life perhaps, but possibly beyond life. As to divorce, I hold the common opinion entertained not in this State, or in our Knickerbocker legislation, but that wider and more general opinion which is incorporated in the legislation of the New-England States on the one hand, and the Western States on the other. It seems to be not generally known that the State of New-York has a very singular, unique and exceptional code of divorce. This State is out of harmony with all the sisterhood of States on the subject of divorce. For instance, here, under our legislation, there is divorce for one solitary cause, and for that alone; whereas, in Connecticut, in Massachusetts, in New-Hampshire, on the one hand, and in Pennsylvania, Ohio, and in all the Western States on the other, there is divorce for a multitude of reasons. I will give an illustration. I hold, for instance, as the great body of the American people do, that if a woman's husband treats her brutally, she is entitled, if she wishes it, to a divorce. I hold that if he neglects to support her, and allows her to go into extreme poverty and privation, she is entitled, if she wishes it, to a divorce. I hold that if he is an habitual drunkard, rendering the life of his wife and children dangerous from his frantic spasms, that she is entitled, if she wishes it, to a divorce. So I might state other grounds

on which a woman is entitled, if she wishes it, to a divorce. Now, Sir, those grounds are held legal and valid for divorce in almost every State of the Union except New-York. A woman who goes into a court in New-Haven and says to a judge and jury that her husband brutally treats her, will get a divorce, because the law don't interfere, the law permits a divorce; but if that same woman living, not in Connecticut but in Brooklyn, should go into Judge Reynolds's court and carry the same evidence before a judge and jury she could get no divorce, and the judge's reply would be, "Madam, however just your cause is, the law of this State peremptorily forbids divorce save for one cause." Now, I thought that the civilization of our day, the good of society, the peace of the family, the sanctity of marriage, all combined to demand that we should change our New-York code of divorce, and adopt in its place the New-England code or the Western code. Does that answer your question?

Q. Giving divorce for different causes? A. Yes, Sir.

Q. It is not your doctrine, then, that husband and wife should be separated at will according to their own notion of propriety, but it should be regulated by law? A. Why, certainly, Sir. My only point is that the law should not interfere in such cases as I have named. Let me give you another illustration. For instance, the law of New-Hampshire permits divorce for desertion, the time being one year; that is to say, in New-Hampshire, which is a good old New-England State, if a man runs away from his wife and stays away a year, the law gives her, if she wants it, a divorce; but, in the State of New-York, a man may run away from his wife and go to China and live 70 years, and she cannot get, however much she may desire it, a divorce. Now, I would like to ask the intelligent judgment of the world why there should be such a law in New-Hampshire giving divorce for desertion for one year, and why there should be a prohibition of divorce in New-York State for desertion for a lifetime.

Q. Then it is not your doctrine, Mr. Tilton, as I understand you, that a man has a right to desert his wife simply because he thinks he has discovered an affinity in another woman? A. No, Sir; that is the doctrine of devils and damnation.

#### MR. TILTON AN ENEMY OF FREE LOVE DOCTRINES.

Q. That is the doctrine of free-love, is it not? A. I didn't know that free-love had any other doctrine except the secrecy of bad behavior.

Q. Well, this doctrine of free-love—have you ever advocated it? A. I have never, Sir, and all my writings, and they are a volume, on the subject, contain repeated references, over and over again, of condemnation of free-love, long before I had any occasion to find my own heart pierced with the bitter reflection that there had been free-love in my own house, and that my family had been destroyed thereby.

Mr. Beach—There was something said in these publications which have been read, Mr. Tilton, toward the sentiment that marriage should continue no longer than there was union of soul; what do you mean by that expression?

Mr. Fullerton—Do you mean anything else than that the principle prevailing in the State, if you please, of Connecticut, should prevail everywhere, that a court of competent jurisdiction should pronounce between a couple where there was such an incompatibility of temper as that they could not live together in harmony and peace? A. That is precisely what I mean. That is precisely what is forbidden here in the State of New-York by law. The Court may be willing to grant it but the law is against it. In Connecticut the court is willing to grant it, and the law is not against it. It is all in a nutshell, Sir. I simply wish that the law of our State should be made to resemble the law of the New-England and the Western States.

Q. Well, you have never advocated any such doctrine as this, that the civil law, as you term it, should have no control over the subject of divorce? A. Not at all, Sir; not at all, Sir.

Q. Your doctrine is that the law should regulate it, and be more liberal in providing causes. A. Precisely. Marriage under the civil law is a contract, and I want the civil law to regard the contract liberally.

#### "FRENCH WITH A MASTER" EXPLAINED.

Q. Now, Mr. Tilton, a poem was read here by Mr. Evarts, entitled, "A New Poem by Theodore Tilton. French with a Master." I see in it there is a reference to orange buds in this way:

Have you in your tresses room  
For some orange buds to bloom?

Why was allusion made to orange buds in that poem? A. Why, Sir, I think the meaning must be very apparent. The little poem was the story of a teacher sitting down giving a lesson to his pupil, and falling in love with her, and ending by a proposal of marriage. He asks her if she has room in her tresses for some orange blossoms. Orange blossoms are the symbol of marriage. A bride wears orange buds in her hair. To ask a lady if she will accept an orange bud is the oriental way of proffering marriage.

Q. And it was to that that you had reference in constructing this poem, wasn't it? A. Certainly.

Q. And you did not mean to convey any indelicate or immoral idea in the construction of that poem at all, did you? A. On the contrary, Sir, I endeavored to convey the purest idea.

Q. I suppose it is very apparent, but our friends upon the other side did not seem to regard it so. A. The only thing bad in the poem is the French. That line is not correctly printed. Very well, never mind.

Q. Well, it is good enough French for me.

Mr. Beach [To Mr. Fullerton]—That line suited Evarts exactly.

Mr. Fullerton—Yes.

The Witness—It should be *Aimer, aimer, ah! c'est nînre*.

Judge Neilson—That is a misprint? A. Yes, Sir; but I am afraid I am responsible for the blunder. I am not much of a Frenchman.

#### MR. TILTON'S OLD-TIME DISCUSSIONS OF WOMAN'S RIGHTS.

Mr. Fullerton [To defendant's counsel]—Now, if you will give me *The Golden Age* of September 9th, 1871, the one from which you read the reply to Mr. Greeley.

Mr. Shearman produces the paper called for.

Mr. Fullerton—I propose to read Article VII., contained in the reply of Mr. Tilton his "Rejoinder to Mr. Greeley," from which the other side read Articles V. and VI. It is as follows:

I cannot overrate my sense of the importance of Woman's Suffrage. It is an infinitely higher question than the abolition of Slavery. Anybody with a *human* heart could see that the slave ought to be set free. But it takes a finer discernment, a deeper penetration, to discover that woman must be enfranchised. You have proved yourself competent to the lower, but incompetent to the higher reform. It must go on without you. It loses much by losing your stout pen, but *you*, lose more by losing your golden opportunity to make *THE TRIBUNE* its banner of battle. Womanhood is a sacred thing, and yet *THE TRIBUNE* insults it every day. The center of the world is home, and yet you bind a chain on the freedom which should reign within it. The chief hell on earth is a marriage profaned, and yet you lock the door to all escape from it. The industrial necessity of our day is better pay for woman, and yet you deny them the ballot to procure it. The incentive to prostitution is hunger, and yet you give its victims only a tenth part of man's opportunity to save themselves from it. You are working a cruel wrong to society—undoing the beneficence of a lifetime, and now you quench all hope of your ever showing any future and growing kindness toward woman's enfranchisement. Nothing remains for its friends but to fight you as its enemy. Consider, therefore, that war is declared.

#### MRS. MORSE'S THREAT TO DESTROY MR. BEECHER'S PORTRAIT.

Mr. Fullerton—I now come to the portrait of Mr. Beecher, which is said to have been removed from your house. Do you remember when it was removed, Mr. Tilton? A. I cannot fix the date, Sir, but it was several years ago.

Q. Well, perhaps you can tell us the occasion for its removal? A. Oh, yes, Sir.

Q. Tell us, if you please, what it was? A. Mrs. Morse had threatened to cut it to pieces.

Q. State the circumstances under which that threat was made? A. In the Autumn of 1870—

Mr. Evarts—Well, if your Honor please, we are not to have the conversation between Mrs. Morse and this witness on any act in this case.

Mr. Fullerton—Yes, if it shows the reason for the removal of this portrait.

Judge Neilson—If you have the fact that its removal was caused by some threats of hers, without the threats, will not that do?

Mr. Fullerton—No, Sir. It is imputed to Mr. Tilton as an offense, in some way or other, that this portrait was removed from his dwelling. I don't know what use the other side intend to put it to.

Judge Neilson—You have the right to ask why it was removed.



Mr. Evarts—And the witness has already said that it was because Mrs. Morse threatened to cut it to pieces.

Mr. Fullerton—Let us see whether the threat was such a one that she was determined to carry it out.

Mr. Evarts—He has given the threat, that it was cut to pieces, and that he sent it away.

Judge Neilson—That it was sent away to preserve it. That is as much as you want.

Mr. Beach—It does not appear whether the spirit in which the threat was made was such as to cause an apprehension of its being carried out.

Judge Neilson—You can ask whether it was said in jest or in earnest.

Mr. Fullerton—I want to show that it was not through any feeling of affection that it was made.

Mr. Evarts—That will be assumed, that it was not. Besides, this is not introduced under any cross-examination of mine upon the subject.

Mr. Beach—You brought the thing in on the cross-examination of Mr. Moulton, and then you renewed it on the cross-examination of Mr. Tilton.

Judge Neilson—I think you have a right to account for its removal, but not to put in the conversation.

Mr. Evarts—That is all I object to—the conversation; I do not object to their accounting for its removal.

Mr. Fullerton—What kind of a threat did Mrs. Morse make in regard to this portrait?

Mr. Evarts—That I object to. He has already stated that she threatened to cut it in pieces.

Mr. Fullerton—I propose to ask the question that your Honor allows.

Judge Neilson—Yes.

Mr. Evarts—Will your Honor be kind enough to note my exception?

Judge Neilson—Yes, Sir.

The Witness—She threatened to plunge her scissors into it.

Q. Did you believe at the time that she intended to carry her threat into execution? A. Yes, Sir, I did.

Q. What was her demeanor, her manner, at that time?

Mr. Evarts—We object.

The Court—You may say whether it was in jest or in earnest.

The Witness—Oh, Sir, it was in earnest; it was a frenzy.

Mr. Fullerton—Where was the portrait hanging at the time? A. It was not hanging.

Q. Where was it at the time? A. It was in my house; it was standing on the floor; I had taken it down from the wall shortly after July 3d. I am not permitted to state the cause.

Q. Well? A. And a very short time after that Mrs. Morse, having received the same—

Mr. Evarts—We object to that.

Judge Neilson—Mrs. Morse made this threat? A. Yes, Sir.

Q. And you removed it for its preservation? A. I put it in a closet first, yes, Sir; and I was afraid she would invade the house, and seek it out and cut it, so I had it sent to Mr. Moulton's.

Judge Neilson—That accounts for its removal.

## THE TELL-TALE ARTICLES LEFT BY MRS. TILTON.

Mr. Fullerton—You have been asked whether your wife took anything with her when she left your house. I want to ask you this other question, Mr. Tilton, — what she left behind her when she left the house, in the shape of correspondence, do you recollect finding any correspondence left, with Mr. Beecher? A. Yes, Sir.

Q. Where did you find it? A. I found them in a little out-of-the-way closet, under lock and key. I found a number of letters written by Mr. Beecher to her, some of them without signature; letters that have been given in evidence, together with a box of photographs of his face.

Q. What among—among what? A. Among various books that he had given her—quite a little library of books.

Mr. Evarts—I object. Now, if your Honor please, how does this become a pertinent subject of inquiry in respect to any cross-examination of mine? The whole inquiry of mine, was whether she took anything with her when she left the house, and the answer was that she took nothing but his love and good-will. Now, is that a basis for them to introduce all that was left in the house?

Judge Neilson—No.

Mr. Fullerton—Strictly speaking, I should have put this question upon the direct examination.

Judge Neilson—If it is a mere inadvertence or omission you can supply it now.

Mr. Fullerton—It was, Sir, an omission.

Judge Neilson—Then you can supply it now, they having the right to cross-examine on it. My experience is sufficient to know that the most able counsel will sometimes overlook a matter.

Mr. Evarts—Well, if my learned friend puts it upon that ground.

Judge Neilson—I understand it so.

Mr. Beach—A portion of the fact did not come to our knowledge until after the direct examination had been through.

Mr. Evarts—Your Honor will recognize the propriety of holding counsel to the strict rule, when a party is being examined.

Judge Neilson—Yes.

Mr. Fullerton—Look at the box now shown you and its contents and say where you found it. A. I found it, Sir, in the same spot in which I found Mr. Beecher's letters to Mrs. Tilton; the letters which have been given in evidence.

Q. Describe the spot more particularly. A. It was a little closet about as high as that (holding up his hands).

Q. Don't say as high as that; but say how high it was. A. A little closet about three feet high and two feet wide, in a corner of the room. It was filled with gifts which Mr. Beecher had made to Mrs. Tilton—many of them books.

Mr. Evarts—I object. That is not a description of the closet.

The Witness—And I found these pictures among those books.

Mr. Evarts—I object. When he is asked to describe a closet, he introduces gifts made by Mr. Beecher. That does not come within your Honor's ruling.

Mr. Fullerton—Yes, it does; it describes the closet by describing what is in it. [Laughter.]

Mr. Evarts—No; my learned friend cannot describe it in that way.

Mr. Beach—When you describe a man, you describe what is in him pretty much. [Laughter.]

Mr. Evarts—It is very well, perhaps, to point a witticism, but it is not a description of the closet to give the contents of the closet. If you have a right to give the contents of the closet, that is one thing.

Mr. Fullerton—The objection, then, is just this—that the evidence is not responsive to my question; not that it is improper in itself.

Mr. Evarts—The objection is this—that it is evidence in chief, not given at the outset, and now not covered by this inadvertence.

Mr. Fullerton—It is covered by the ruling of your Honor, however, that, being omitted through an inadvertence, it can now be given.

Mr. Evarts—I don't understand my learned friend to say that all the evidence concerning this subject of gifts or what not, was omitted by inadvertence. Whenever my learned friend puts himself upon that—that the whole line of evidence touching gifts between Mr. Beecher and Mrs. Tilton was omitted by inadvertence, then we will have to deal with it upon that proposition. But I have not understood him to put himself upon that.

Mr. Fullerton—And the reason my friend has not understood it so, is because I have not done it.

Mr. Evarts—Exactly.

Mr. Fullerton—Now, if your Honor please, we propose to show where this box was found, and where these letters were found; I propose to show the character of the closet, what it was used for; and for the purpose of showing the intent of putting these things there, I propose to show what was there; that it was a place for keeping these gifts; that they were kept secretly, out of the way, where they did not meet the eye of any one about the house; and I submit that it is proper for me to show that.

Judge Neilson—If you say this subject did not occur to you on the direct.

Mr. Fullerton—I knew nothing of this box and its contents at all on the direct examination; it has come to my knowledge since. I knew, however, of these three or four letters which have been admitted, which were left behind by Mrs. Tilton at the time of her abandoning her home; but I did not know that they were found in this closet; and I intended to ask Mr. Tilton on the direct examination if he found these letters in the house after Mrs. Tilton left.

Mr. Evarts—That is covered by the inadvertence, and is covered by your Honor's ruling. Now, all the rest is not introduced by any examination of mine, and is not under the plea of inadvertence, and, therefore, is not a proper subject of inquiry.

Judge Neilson—No.

Mr. Fullerton—The reason why I did not inquire as to the contents of the closet, was that I did not know of it; I was ignorant of this closet.

Judge Neilson—I think, under the circumstances, you can open the closet and let us see what is in it. [Laughter.]

Mr. Fullerton—We have got it open, if your Honor please, but they don't want to let us see what was in it.

Mr. Evarts—Now, if your Honor please, how does it affect Mr. Beecher where this lady kept the presents that he gave her. If he gave her any presents clandestinely, that is one thing; but if they were given openly, and were afterwards kept in a closet, how does that affect the character of the gifts?

Mr. Beach—A present generally keeps the character that is impressed upon it when it is given.

Mr. Fullerton—I think if we could show that this lady wore a concealed locket, given to her by Mr. Beecher, with his portrait, we should be permitted to show it.

Mr. Evarts—You would, no doubt, show it, if you could.

Mr. Beach—I don't know about that; we might have a little compassion for the lady.

Mr. Evarts—I object to the inquiry.

Judge Neilson—We will take it.

Mr. Fullerton—You found this box, with its contents, in this closet? A. Yes, Sir.

Q. What was this closet used for?

Mr. Evarts—I object.

The Witness—It was a little bit of a closet; I do not know that it was used for any other purpose than the preservation of these gifts.

#### PHOTOGRAPHS OF MR. BEECHER PROPOSED IN EVIDENCE.

Q. Are these all likenesses of Mr. Beecher? [Handing witness photographs]. A. Yes, every one.

Q. Are they all different likenesses, taken in different attitudes? A. Yes, Sir.

Mr. Fullerton—If your Honor please, I offer these in evidence.

Mr. Evarts—Let us look at them.

Mr. Fullerton—Certainly; [counting] there are six of them.

Mr. Evarts—Are these offered in evidence?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—For what?

Mr. Fullerton—To show that they are good likenesses, in the first place, and in the second place, that they were in the possession of Mrs. Tilton. [Laughter.]

Mr. Evarts—I do not know, if your Honor please, what there is about this evidence that is considered of any importance. These are photograph likenesses.

Judge Neilson—I think it would answer your purpose, Mr. Fullerton, if you would have him state the number of them.

Mr. Fullerton—How, Sir?

Judge Neilson—To state how many there are.

Mr. Evarts—[To Mr. Beach]: I am willing the jury should see them.

Mr. Beach—Well, the counsel says that he is willing the jury should see them.

Mr. Evarts—I am willing the jury should see them, but I do not see what evidence they are in this case; they might have



seen them at Sarony's, where they were taken—as many of them as they wished.

Mr. Fullerton—They could not have seen these at Sarony's when they were taken.

Mr. Evarts—Sarony took more than one copy.

Mr. Fullerton—But he did not keep them.

Mr. Evarts—You don't know about that.

Mr. Fullerton—He did not keep those that were found in the cabinet, any way.

Mr. Evarts—Now, this illustrates the point of the objection. Anything you trace to Mr. Beecher in the way of presentation of photographs may have such weight as my learned friend may choose to give it, and your Honor and the jury may think it deserves; but the fact of finding half a dozen photographs of Mr. Beecher in the possession of this lady certainly does not tend to prove anything that is in issue here. We would, all of us, be very unwilling to judge from any such trivial circumstance as having a print of a public picture in the possession of a person.

Mr. Fullerton—Well, a single one might not be suspicious, but when you find seven of them then you begin to regard it with some degree of suspicion. I think the force of the inference to be drawn from this fact does not depend at all upon whether Mr. Beecher gave the pictures to this lady or not. I think there is an inference to be drawn from the fact that pictures of him were found in her possession.

Judge Neilson—Yes; but as the learned counsel says, it does not implicate Mr. Beecher. It might all be without his knowledge.

Mr. Fullerton—It is very true that it might be without his knowledge; but it tends to show to some extent the degree of regard and affection that this lady retained for him. It may enable the jury to come to a conclusion in regard to another branch of the case with some facility; in connection with the affectionate letters written by her in regard to him, I think they are very potent evidence in this case; and the fact that I want to call attention to largely, is the fact that no two of the pictures are alike.

Judge Neilson—We have the fact that they were found there, and I suggest that we may take down a description of them, with the fact whether they were all taken by the same artist.

Mr. Beach—That is enough, I think.

Mr. Fullerton—The most of them were taken by the same artist, but in different attitudes, and the inference is that they were taken at different times.

Mr. Evarts—I don't know what that inference has to do with it.

Judge Neilson—That inference may account for having so many—that they are different.

Mr. Evarts—Still, they might have been taken at the same time.

Mr. Fullerton—But not in the same attitude.

Mr. Evarts—My learned friend exposes the defect of his offer. If we were trying Mrs. Tilton, then the possession of these pictures might be some evidence against her, because it would be, in some degree, her act. But they say that Mrs. Tilton's act in getting these pictures, not from Mr. Beecher,

but from any source, and having them in her possession, is evidence against Mr. Beecher.

Judge Neilson—No; they do not quite say that. Well, Mr. Fullerton?

Mr. Fullerton—Look at the two letters I now show you, being "Exhibits 13" and "18," and say whether they are among those you found in the cupboard when Mrs. Tilton left?

Mr. Evarts—Are these the ones already in?

Mr. Fullerton—Yes, they are already in.

#### THE PHOTOGRAPHS ADMITTED.

Mr. Evarts—I would like to know if these photographs are in evidence or not.

Judge Neilson—No; we have a description of them; they are not in evidence; they cannot print them in the case; they cannot make an exhibit of them; they are described on the notes.

Mr. Fullerton—They are in evidence, however, Sir.

Judge Neilson—That is, they have been read to the jury.

Mr. Fullerton—Shown to the jury—exhibited to the jury; they are in evidence the same as an instrument is put in evidence in a case of homicide; it does not go into the case bodily, but it is an exhibit.

Mr. Evarts—I want to know, with a view of taking my exception, if these heads have been put in evidence?

Judge Neilson—I think they are not in evidence, but a description of them.

Mr. Evarts—If your Honor please, note my exception to the fact of the pictures or their description being admitted in evidence.

Judge Neilson—Yes.

#### THE LETTERS FOUND IN THE CUPBOARD.

Mr. Fullerton—What do you say as to those two letters? A. What is your question?

Q. Look at that signature and state in whose handwriting it is? A. Mr. Beecher's handwriting.

Q. Mr. Beecher's own handwriting? A. Yes, Sir.

Q. "H. W. Beecher" is in his own handwriting? A. Yes, Sir.

Mr. Fullerton—That is a good enough description of that one.

Mr. Evarts—I don't think, if your Honor please, that there is any point to be taken between the pictures and their description—I mean as to the force of the legal objection. I would as soon have the pictures in as their description; the legal point is the same.

Judge Neilson—I don't know whether it is exactly.

Mr. Evarts—It so strikes me. If they are entitled to prove, as against Mr. Beecher, anything concerning the pictures, I would as lief have the pictures as the description.

Judge Neilson—It is a mere circumstance. Let the stenographer read what has been said upon that subject.

[THE TRIBUNE stenographer then read:]

Q. [Handing letter to witness.] Look at that and see whether you found that letter in the closet after your wife left? A. I did.

Q. Exhibits No. 12, 13, and 20 were found in the closet after your wife left? A. Yes, Sir.

Mr. Fullerton—I would like to learn definitely from the Court how far these are to be regarded as in evidence, because it will be necessary to show them to the jury and call attention to some facts connected with them.

Judge Neilson—In order to save the rights of your opponent, I shall regard them as in evidence.

Mr. Evarts—Your Honor will please note our exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton—Then they will be marked.

[The photographs of Mr. Beecher shown witness were marked respectively Exhibits 96, 97, 98, 99, 100 and 101.]

Mr. Fullerton—If the Court please, I have found another picture of Mr. Beecher, but it is a very small one.

Judge Neilson—Has that picture been framed?

Mr. Beach—No, Sir, except in a paper frame.

[Marked Exhibit 102.]

#### SOME OF THE HUSBAND'S LETTERS EXPLAINED.

Mr. Fullerton—If your Honor please, Mr. Shearman did not read all of the letter of January 30th, 1868, dated at the Monongahela House, and I want to read the balance of it [Reading]:

MONONGAHELA HOUSE, }  
Pittsburgh, Jan. 30, 1868. }

*My Darling:* I am here in one of my old, familiar, and favorite hotels. A good welcome has always awaited me in this smoky, Presbyterian city. From the beginning, my audiences here have been large; none ever larger than to-night's, which filled every tier of the Academy of Music. I had full liberty of utterance, and spoke as well as I usually succeed in doing, when I do my best.

Perhaps your loving letter, which awaited my arrival, and greeted me as with a kiss, had something to do with my good spirits and my evening's success.

All the colored men in this hotel know me and are full of attentions. My face gets shaved with unusual care, my boots get blacked to an unwonted polish, and my hot-bath is arranged with noticeable nicety.

I am now well established in my new housekeeping. My plan of traveling with a trunk, instead of a mere carpet-bag, is a great addition to my comfort; in fact, it is a positive luxury. My little reticule has become quite a curiosity shop. It contains my New Testament; the North American Review; a new English tooth-brush; a long, patent-pointed lead-pencil; a little portfolio for writing in the cars; a comb and brush; a wisp-broom; a railroad map; a roll of letter-stamps and a wad of ice-cream candy.

My trunk is carefully set right once a day, but gets dreadfully topsy-turvy in the baggage-man's hands. In opening it, I always find the stockings sticking among the shirt-bosoms, and the handkerchiefs scattered about among the legs of my flannel-drawers. It is lucky that I carry no bottles of wine, for they would be broken a dozen times a day, and my shirts made of the color of robin redbreast's bib.

A gentleman to-night said that the Pittsburgh papers had lately quoted your remark about your four children; and he wondered whether or no so young a looking man as I could lawfully have so many!

All this day, while riding thither in the cars from Cleveland (for I had to go all the way to Cleveland to get here in time for my lecture to-night), I spent in writing an article to *The Independent*, entitled "The Tongue of Fire; or Extemporaneous Preaching."

I inclose a hundred dollar bill. Perhaps it is risky to send money by the mail, in large amounts, but I must leave too early in the morning to get a draft at the bank. Use it according to your discretion in paying the debts. I hope I do not frighten you with the long list of them which I sent in my last letter. I simply made that exact statement in order to appoint you my cashier and business agent—

the balance of it Mr. Shearman read. I will call your attention, Mr. Tilton, to this other letter read by Mr. Shearman, dated January 26th, 1868.

Mr. Beach—Written in lead pencil in the cars.

Mr. Fullerton—Written in lead pencil at the depot. I call your attention to this paragraph:

The secret of all my long-continued moodiness has been dissatisfaction not with you, but with myself. I was once well enough content to be esteemed at something better than my merit. But of late all such estimates of me have been horribly repulsive to my mind. They have revealed me to myself in the character of a hypocrite, a deceiver, a whitened sepulchre filled with dead man's bones. Above all things it has been dreadful for me to hear praises of myself from you and Florence, &c.

I ask you what occasioned you to write in that strain at that time?

Mr. Evarts—That I object to.

Judge Neilson—I will take it, Sir.

Mr. Evarts—The language must speak for itself.

Judge Neilson—Yes, Sir; if there is any circumstance, though, he may state it—a circumstance causing him to write that.

Mr. Evarts—This is calling for matter that is no evidence against us. This letter, on one side or the other, was put in in regard to the disposition of these parties towards each other, my friends having taken the lead in introducing it.

Judge Neilson—But this is a letter put in by you [Mr. Evarts].

Mr. Fullerton—Yes, Sir, and we follow it.

Judge Neilson—And they call, perhaps, for some circumstance that tends to illustrate that.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Perhaps it is imaginable that there would be some answer that would be within the rule of evidence.

Judge Neilson—Simply with that view I admit this.

Mr. Evarts—But to ask a witness to explain the moods and feelings that he has expressed, it does not strike me that it is within the matter, and if it relates to anything that was in confidence between the husband and the wife, it should be excluded.

Mr. Beach—Where they give in evidence the declaration of a party, I submit that it is always proper to ask the party that is to be affected by that language, what was the sense in which he used it?

Judge Neilson—What led him to use it?

Mr. Fullerton—Yes, Sir; and in this connection I will call his attention to this other letter of a similar character, where he appears to be in a melancholy mood, signing himself, "Yours in dust and ashes," &c.

Mr. Evarts—This opens a large door, if, whenever he writes a letter, it is to be shown how he came to write it.



Mr. Fullerton—It does open it. If my learned friend put in a letter written by Theodore Tilton with a view of using what he there said against him in this case, it is proper that he should explain that.

Judge Neilson—There are certain things proper in that view, undoubtedly. We will take this, and see what it is.

Mr. Evarts—Your Honor will please note my exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton—My question is, what occasioned you to write letters of that character and description, to which I have called your attention?

Mr. Beach—[To Mr. Fullerton.] I would get that letter of January 26th, 1868, first, separately.

#### THE REVOLUTION IN MR. TILTON'S RELIGIOUS VIEWS.

Mr. Fullerton—[To the witness.] Speak, if you please, of the letter of Jan. 26th, 1868, to which I first called your attention? A. I have no particular recollection of that letter more than the other letters, or of that special mood more than the other and similar moods. The reading of the letters has thrown up to the surface many similar experiences, all grounded in early religious convictions, which, in later years, were passing through my mind, causing me great suffering. I can only explain it, Sir, by reference to myself, which, perhaps, may not be appropriate to give.

Mr. Beach—It is necessary you should do so, Mr. Tilton.

Mr. Fullerton—Yes, I hope you will do it, Mr. Tilton.

The Witness—I was brought up from my early childhood under the dominion of the extremest school of the old Presbyterian faith. I learned it when I was a boy—a very small boy, under ten years of age. I received it from the hands of Dr. Alexander, and from my early childhood I was accustomed to take those dread and majestic views of life and of the future, the magnificence of God's greatness, the perfection of His purity, in comparison with which any human character was dwarfed and shriveled. All the early years of my life I spent very much—I was going to say—like a monk in a monastery. I was a religious ascetic. I would have cut off my right hand rather than have written a letter on the Sabbath day. I was extreme and rigid. The scenes of the other world were powerful with me. I was brought up to the conviction that all men were miserable sinners, and when I came, in later years, to abandon that view of God and of human character, still the resonance of those views have ever left their echoes in my mind; I always heard them. Walking along the street, and hearing the touch of an organ in a church, will, at this very hour, bring back to me all the reverberations of that old theology, and so my letters, many of them, written in a languid mood, or after having exhausted my physical strength, going to the hotel between ten o'clock and midnight, express those words. I cannot describe to you, Sir, the intellectual suffering that I had for two or three years, based upon that early trouble in which I was very severely grounded, and which caused me four years of struggle and

laceration to get through with. It made me a moody man—at times a disagreeable man. Looking into myself, I thought myself a bad man. I humbled myself in dust and ashes; I think any man does who has a sense of God. Never mind what his later views are, the early education comes rolling up like a wave. It comes upon me now just the same as ever. I don't know whether my description is intelligible to you or not.

Q. Now, Mr. Tilton, in this connection—

Mr. Evarts—Does your Honor consider this evidence as within the rule?

Judge Neilson—Yes, Sir, precisely as it would be proper to allow a man to testify when he wrote a certain letter that he was sick, or had the gout, or had been three nights without sleep, or any other circumstance of that kind qualifying his then condition.

Mr. Evarts—The trouble is that the witness says he has no recollection concerning any particular impressions that he had.

Judge Neilson—Except a general statement.

Mr. Evarts—And then he relates the experience of his early years.

Mr. Beach—No, he does not say he has no recollection of any particular impressions. He said he had no recollection of that particular letter.

Judge Neilson—I think we will let it stand.

Mr. Evarts—Your Honor will be so good as to note my motion to strike it out, and your Honor's ruling, and my exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton—I understood you to say, Mr. Tilton, that it gave you great pain and anguish when you were undergoing this change of religious sentiment in giving up the old views for the new? A. Yes, Sir; for a period of four years there were many days and hours in which, if I should describe my inner life, I should have to borrow Cowper's figure, where he speaks of the frog creeping through the ooze of the Acheron.

Q. Are those expressions of humility and self-abasement which are found throughout this correspondence the result of this change in religious sentiment?

Mr. Evarts—That I object to. The generalization of all this kind of correspondence, and the assigning of a reason by a leading question of that kind, I think is not within the rule of a re-direct examination. I am willing the letter should be inquired about, and if there is anything in his memory that enables him to assign any fact that bears upon the letter, why that is one thing; but a good many letters have been read, and a good many forms of expression have been used, and now my learned friend asks him whether, in the course of this correspondence, those moody phrases were not the result of this religious experience.

Judge Neilson—The question ought not to be leading, otherwise I think he may ask it.

Mr. Evarts—It is opening very widely the explanation of written words by external feelings not otherwise expressed.

Mr. Fullerton—This question runs through many years, and at times we find Mr. Tilton in moods of despondency.

Judge Neilson—And you think you will account for it?

Mr. Fullerton—Yes, Sir.

Judge Neilson—And he seeks to account for it in this way.

Mr. Fullerton—Yes, Sir; he seeks to account for it in this way. It is altogether proper he should explain it, because these expressions of humility and self-abasement will be referred to and differently accounted for unless they are explained. [To THE TRIBUNE stenographer.] Read the question.

THE TRIBUNE stenographer read the question, as follows:

Are these expressions of humility and self-abasement which are found throughout this correspondence the result of this change in religious sentiment?

Mr. Evarts—That I object to.

The Witness—[To Judge Neilson.] Am I to answer, Sir.

Judge Neilson—Yes, Sir.

Mr. Evarts—I object to it, both in substance and as leading.

Judge Neilson—Well, it is leading.

Mr. Fullerton—What is that?

Judge Neilson—He [Mr. Evarts] suggests the question is leading; it is leading.

Mr. Fullerton—Well, it is somewhat leading, it is true, but it is allowable under the circumstances, and considering the subject of inquiry.

Judge Neilson—I think you can easily modify the question so that it will not be objectionable.

Q. What occasioned those expressions of yours of despondency and humility found in your letters, to which attention has been called?

Mr. Evarts—That we object to.

Mr. Fullerton—That we understand.

Mr. Evarts—And we except to your Honor's ruling.

Judge Neilson—Yes, Sir.

The Witness—They were occasioned by the inward struggles which I have already described.

Q. I call your attention to a letter of your wife's put in evidence by the other side, dated February 28, 1869, in which she quotes from your letter as follows—

Mr. Beach—Various expressions used in such moods, and then goes on to quote them as follows:

Mr. Fullerton—[Reading]:

Then feeling that these extreme delights would make a woman mad outright, you have six letters ending: "Yours in dust and ashes;" "Your sorrowful and groaning husband;" "Your suffering husband;" "Yours doggedly," and "Yours in agony."

A. I cannot account for them in detail. I don't know what individual letter any particular sentence there quoted may have applied to, but the general mood out of which each letter was written was that mood of self-abasement which so often came upon me in consequence of my early education, and which still clouds me at times.

Q. In this connection I will ask you what change your religious sentiments did undergo—

Mr. Evarts—What is the question?

Mr. Fullerton—The question is: I will ask you what change your religious sentiments did undergo, and as it meets another branch of the case to which I shall put a question by-and-bye, I may as well dispose of it now.

Judge Neilson—I know it does.

The Witness—I hardly know in what words to state accurately the change. It was a passage from extreme Calvinistic views, not merely rigid Presbyterian views, but extreme, severe, overpowering Calvinistic views. I passed from those to a more genial view of God and of His kindly disposition towards man. I think I removed from my mind the apprehensions of future judgment, the wrath to come. I suppose the one great point, that on which my chief struggle took place, was as to what theologians call the Deity of Jesus Christ. I had been brought up to recognize Jesus of Nazareth as the Lord Jehovah, and I passed from that to the Unitarian view, which recognizes Him as the Master and Teacher of us all, still less in degree than God the Father. I had held the one view with such tenacity, and it had gone down to the depth of my conviction so far, that the displacement of it shook me to the very foundations of my life; I reeled under it; and the misery which it brought to me was all the greater because I was not able to speak about those views to Elizabeth without giving her great pain; so my mouth became closed. Perhaps I ought to say, also, in accounting for some of the letters, that I had made her a pledge some years ago when I first went on a journey that I would always write her my exact thoughts, whether they were good or bad. I made it a point of honor with me to tell her all my behavior, whether it was fretful, selfish, or peevish, or whether I thought I was conquering myself. I never hid anything from her, Sir.

Q. Now, Mr. Tilton—

Mr. Evarts—I move to strike that out as not responsive to the question.

Judge Neilson—I think I will let it stand. It is a negative, and does not do you any harm.

Q. Can you give me the date of the commencement of this change in your religious views? A. I cannot fix the day or the month, but I know the circumstances out of which it grew.

Q. State them, if you please? A. I became editor of *The Independent* when I was quite young, and my hands were immediately filled with public questions—the Anti-Slavery movement, the prosecution of the war, the reconstruction of the Union. I used that journal, which was ostensibly a religious and theological newspaper—I used it not for any religious or theological purposes, but for those numerous questions. I occupied my mind with those; and during that occupancy—during that busy employment with public questions, I never had leisure to examine the foundations of those religious opinions in which I had been brought up from childhood. But, when slavery was abolished, and the war was over, and my occupation, in a certain sense, was gone, on finding a religious paper on my hands, I turned to examine the theology in which I had been trained from childhood, and it gradually faded away before my inquiry. Then came the struggles to which I have referred.

#### ORIGIN OF MR. TILTON'S LATER RELIGIOUS BELIEFS.

Q. And where were you attending divine service during this period? A. Plymouth Church.

Q. Had the doctrines taught there anything to do with this



change? A. Yes, Sir; I think that the doctrines taught there were the origin of the change; I think I simply carried the change which Mr. Beecher has introduced into modern theology and thought a step or two farther than he has carried them.

Q. You believe in the existence of a God? A. Yes, Sir; very profoundly.

Q. In his omniscience and omnipresence? A. Yes, Sir.

Q. Do you believe in the divinity of Christ? A. I do, with a proper limitation as to the meaning of the word "divinity." I believe in the divinity as contradistinguished from the deity of Christ; in other words, if you will permit me to explain—

Q. Certainly. A. Perhaps you noticed that, in one of the letters which Mrs. Tilton wrote to me, she speaks of a sermon by Mr. Beecher, with a title "The Divinity of Man." Now, I hold, in a still larger, and broader, and more far-reaching sense, the divinity of Christ. At the same time, I do not rank in my thought the functions and character of Jesus Christ with the functions and character of God the Father; I did in my childhood; I have ceased so to do, and that is the principal point of change in my faith.

Q. It amounts to about this, then, I think, Mr. Tilton, you are nearer to a Unitarian than anything else? A. Yes, Sir, I am not a church member of any sect.

Mr. Fullerton—If your Honor please, it is after the time for the adjournment, and I propose to stop here.

Judge Neilson—Very well, [To the jurors]: Please be in your seats to-morrow at 11 o'clock.

The Court thereupon adjourned till 11 o'clock on Tuesday.

## TWENTY-SEVENTH DAY'S PROCEEDINGS.

A NEW WITNESS FOR THE PLAINTIFF.  
A FORMER SERVANT IN MR. TILTON'S FAMILY GIVES  
UNEXPECTED TESTIMONY—WHAT SHE SAW, AND  
WHAT SHE HEARD MR. BEECHER AND MRS.  
TILTON SAY—AN ATTEMPT TO INTRODUCE MR.  
TILTON'S SWORN STATEMENT—LONG DISCUSSIONS  
BY THE COUNSEL.

TUESDAY, Feb. 16, 1875.

The testimony elicited from Mr. Tilton to-day was fragmentary in its character, and every step in the way of the re-direct examination was contested by Mr. Evarts. Mr. Fullerton's first question was in regard to Mr. Tilton's religious belief, and in answer the witness said that he believed in the immortality of the soul.

Section VI. of Mr. Tilton's Statement, containing the sentence, "To love is praiseworthy," etc., a part of which was misquoted, was offered and objected to by the defense. The objection was overruled, and Mr. Fullerton was allowed to read the section, after which the witness testified that he did not purposely misquote Mrs. Tilton's letter, his object being to compliment his wife, not misrepresent her. The "True

Story" was then turned to, and amid the frequent objections of Mr. Evarts, and the consequent discussions, the witness was allowed to testify as to his object in writing the "True Story."

The most important discussion of the day took place over a motion of the plaintiff to introduce a part of Mr. Tilton's "Statement" containing Mrs. Tilton's alleged confession. When Judge Neilson allowed Mr. Tilton to testify, he ruled out confidential communications between the witness and his wife. This excluded the "confession," and Mr. Tilton's lawyers watched closely for some way to get it in, in some shape. When the defense, in the cross-examination of the plaintiff, asked a question referring to "Mrs. Tilton's confession," the plaintiff's lawyers thought they saw a chance, and so asked what confession was referred to. The defense having in a question during the cross-examination referred to a confession, Mr. Fullerton contended that the plaintiff might find out what that confession was, and so the Judge ruled after a long debate. But this was only one point gained. The next purpose was to read Mr. Tilton's sworn statement before the Committee, which would let in Mrs. Tilton's confession. Mr. Evarts was very persistent, and brought every argument to bear out his point, but the Judge decided that Mr. Beach might continue to read.

At this point the witness, Mrs. Carey, was introduced. After her testimony had been taken, Mr. Fullerton attempted to find out what it was that Mrs. Tilton maintained when, as was brought out in the cross-examination, the witness had said: "She maintained before her mother that she had done no wrong." Mr. Evarts objected to Mr. Tilton's testifying what his wife had "maintained" to her mother. Forty minutes of hot debate followed the protest, and Messrs. Beach and Fullerton gained their point.

An unexpected episode took place to-day—the introduction of a new and hitherto unheard-of witness—a servant in the family of Mr. Tilton in 1839. In the midst of Mr. Tilton's examination, in the afternoon, Mr. Fullerton stopped and asked Judge Neilson if he might, at that point, introduce a witness whom they had summoned from New-York, supposing that they would finish the examination that day. The witness was a lady in delicate health, and it was absolutely necessary that she should return to New-York that night. Mr. Pearsall entered the court-room at this moment

with a woman of middle age, who took the witness chair, Mr. Tilton slipping down and seating himself with his counsel. Being sworn, the new witness gave her name as Mrs. Catharine Carey. She was evidently suffering under severe illness, being very pale and thin. During her entire examination she held a handkerchief before her mouth, and occasionally seemed in pain. She gave her testimony in a clear voice, and is apparently an intelligent though uneducated woman. She became confused only once or twice in trying to understand some of Mr. Evarts's long and intricate questions. Mrs. Carey was the wet nurse in Mr. Tilton's family after the birth of the boy Ralph in June, 1869. She testified that she was in the house two weeks before Mrs. Tilton went to Monticello, and that during this time Mr. Beecher called four or five times. On one of these visits Mr. Beecher, the witness said, went into Mrs. Tilton's bedroom, and Mrs. Tilton closed the folding doors which divided the bedroom from the room in which the witness was. After Mrs. Tilton returned from Monticello, the witness stated that one day about dusk, while going into the dining-room to get a drink of water, she saw Mrs. Tilton sitting upon Mr. Beecher's lap with her arm upon his shoulder. She heard Mr. Beecher say, "How do you feel, Elizabeth, dear?" To which Mrs. Tilton replied, "Dear father, I feel so-so."

Mrs. Carey testified that she left the Tilton family in consequence of a "fuss" with Bessie Turner. The direct examination lasted less than 15 minutes, and Mr. Evarts then began to cross-examine the witness. He followed her career after she left the Tilton's up to the present time, she being now in Bellevue Hospital, suffering with lung disease. About Mr. Beecher, she said that she had never seen him before he came to call on Mrs. Tilton, but she had "heard tell of him." The cross-examination developed that at the time Mrs. Carey was in Mr. Tilton's house Mr. Beecher sent Mrs. Tilton baskets of flowers which stood about her bed. The arrangement of the rooms at Mr. Tilton's house were described to the best of the ability of the witness, but she did not make it very clear.

THE PROCEEDINGS—VERBATIM.

MR. TILTON BELIEVES IN THE IMMORTALITY OF THE SOUL.

The Court met at 11 a. m. pursuant to adjournment, and Mr. Theodore Tilton was recalled and his re-direct examination resumed.

Mr. Fullerton—At the close of yesterday's proceedings, Mr. Tilton, we were dealing with your religious faith. I believe there is one other question I desire to ask you on that subject. Do you believe in the immortality of the soul? A. I do, Sir.

Q. And in a future accountability? A. I do, Sir.

THE CORRESPONDENCE PRINTED BY COUNSEL'S ADVICE.

Q. I pass from that then to the publication of the letters in *The Chicago Tribune*. You stated in your cross-examination that you had been greatly misrepresented, and that your counsel thought that justice required that those letters should be published. In what respect had you been misrepresented, and in what respect would the publication of those letters, or any part of them, do you justice?

Mr. Evarts—What is that? [To THE TRIBUNE stenographer.] Won't you read the question before it is answered?

[THE TRIBUNE stenographer read the question.]

Mr. Evarts—You mean the publication of the wife's and his?

Mr. Fullerton—Yes; the correspondence in *The Chicago Tribune*.

The Witness—Do you wish me to answer, Sir?

Mr. Fullerton—Yes, Sir. A. Well, Sir, during the early part of the Summer, when this case was begun to be talked of in the newspapers, charges were brought against me in various journals to the effect that I had been for years a very brutal man in my family, that I had ill-used my wife, that I was given to drunkenness and orgies, that I was in every respect a savage, and my friend and counsel, Judge Morris, said that that popular impression was working me great injury and detriment, and after he read the correspondence which during all those many years had passed between my wife and myself, he suggested the propriety of publishing it, or extracts from it, in order to do away with that popular impression, which was certainly unjust and very injurious.

A MISQUOTATION IN THE SWORN STATEMENT ACCIDENTAL.

Q. Your attention was called to an extract from a letter, on your cross-examination, dated February 3, 1868, in which appears the extract, "To love is praiseworthy, but to abuse the gift is sin," &c. From what did you make the copy of that letter to insert in your statement—from the letter itself or from the publication in *The Chicago Tribune*? A. I do not think, Sir, the publication in *The Chicago Tribune* had been made at that time. I think I made it from the letter itself.



Q. Well, it is said that a part of the quotation is left out—a part of the letter. I want to ask you whether you did it purposely or was it accidental? A. No, Sir; I was not aware that any part had been omitted until my attention was called to it. It was pure accident.

#### A SECTION OF THE SWORN STATEMENT ADMITTED.

Mr. Fullerton—I now offer in evidence Section VI. of that statement, in which that extract from the letter appears.

Judge Neilson—A part of that has been read, I think.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—I object to that, if your Honor please.

Judge Neilson—It is on the ground that a part of that document has been read.

Mr. Evarts—I have not read any part of that document.

Mr. Fullerton—Yes, the gentleman has read a part of the document.

Mr. Evarts—I think not. I have cross-examined the witness in regard to his former publication of this letter now produced here, which differed from that letter, and that fact and that single fact is all that I have proved. I have read no line of that statement whatever.

Judge Neilson—I think you are right—

Mr. Evarts—I put that in his hands and called his attention to it, and thereupon asked him if that was a publication of the letter authorized by him. He said something, that he could not answer for the correctness of the printing. I then produced him the writing which he recognized as that of his amanuensis, and then I confined myself entirely to that letter and to the publication of that letter.

Judge Neilson—I think you are right, Mr. Evarts, and still, if your examination tended to show a mispublication of the letter, I think he may explain that if he can, and this calls for that explanation, and for that end it is proper that the clause should be read.

Mr. Evarts—If your Honor please, he has already explained it, and said he didn't know until it was produced here that there was a difference.

Judge Neilson—I think he may read it. It has been sufficiently referred to.

Mr. Evarts—Your Honor will be so good as to note our exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton [Reading]:

VI. That previous to the aforesaid criminal intimacy, one of the reasons which Mrs. Tilton alleged for her encouragement of such exceptional attentions from the Rev. Henry Ward Beecher, was the fact that she had been much distressed with rumors against his moral purity, and wished to convince him that she could receive his kindness, and yet resist his solicitations; and that she could inspire in him, by her purity and fidelity, an increased respect for the chaste dignity of womanhood. Previous to the Autumn of 1868, she maintained with Christian firmness towards her pastor this position of resistance, always refusing his amorous pleas, which were strong and oft-repeated; and in a letter to her husband, dated February 3, 1868, she wrote as follows: "To love is praiseworthy, but to abuse the gift is sin. Here I am strong.

No demonstrations or fascinations could cause me to yield my womanhood."

Q. Now, Mr. Tilton, I understand you to say that you did not purposely misquote that letter? A. No, Sir; I think that must be very evident from looking at it. The object of the quotation was the very last sentence, namely: "No demonstrations or fascinations could cause me to yield my womanhood."

Mr. Beach—As written at the date of that letter? A. Yes, Sir. The whole object of the quotation was to adduce her own testimony to her own integrity of character at that time, not to misrepresent her, but to compliment her.

#### MR. TILTON'S SHORT-HAND NOTES OF CONVERSATIONS.

Mr. Fullerton—Your attention has been called to the so-called "True Story," and to the fact that Mr. Moulton called on Mr. Beecher, and, after an interview with him, returned to you, and immediately gave to you an account of the interview, which you took down from his lips in phonographic notes. Did you take down the narration that Mr. Moulton gave to you of that interview? A. I did, Sir, on the spot.

Q. Have you got those phonographic notes? A. I have got all that are left of them. There seem to have been some pages lost.

Q. Where are the original notes—have you them with you? A. I saw them two or three days ago.

Mr. Fullerton—[To Mr. Morris]—Have you got them?

Mr. Morris—No.

Mr. Fullerton—[To the witness]—Where are they? A. They must be there, I think, in that bundle.

Q. Look at the paper which I now show you, and say whether it is a correct translation of them? [Handing witness papers.] A. I don't know about this, Sir. I can look at the notes themselves.

Mr. Morris—I don't know anything about them. I haven't them, that I am aware of.

The Witness—I saw those notes only a day or two ago.

Mr. Fullerton—I supposed they were here. In whose handwriting is that paper? A. Mr. Eddy's.

Q. Do you recollect translating the notes to him and having him write them out? A. I recollect making a copy of the notes. I don't know how this came to be made. I could not certify that this is a correct copy, but I can read the notes themselves.

Mr. Fullerton—I will see if they are here; I will pass it for a moment.

Mr. Evarts—Well, when the notes are produced it will be time for us to make our objection.

#### MR. TILTON'S OBJECT IN SHOWING THE TRUE STORY.

Mr. Fullerton—Now, Mr. Tilton, this "True Story" has been the subject of a good deal of inquiry. You have testified that you showed that "True Story" to several persons? A. Yes, Sir.

Q. With what object did you show it to them?

Mr. Evans—What is this question to show?

Mr. Fullerton—To show the "True Story."

Mr. Evans—I don't know what we have to do with that.

Judge Neilson—It is like asking, how came you to do so—what occasion had you to do so? I think those inquiries are proper.

Mr. Evans—People are to be judged by their actions, if your Honor please.

Judge Neilson—Undoubtedly.

Mr. Evans—I suppose his object in showing it was that the people he showed it to might see it. [Laughter.]

Judge Neilson—That is one object.

Mr. Evans—And that is a consequence or a purpose that the law imputes to the act.

Judge Neilson—There are very few acts that may not be characterized and explained—very few.

Mr. Evans—Yes; but there are very many that the law does not allow the actor to characterize and explain.

Judge Neilson—I think this witness can tell how he came to show this paper, as you referred to it—how he came to do it—what led to it.

Mr. Evans—Yes; but that is not exactly the point of my friend's inquiry. You might prove a fact or an act of somebody else, as asking him to see the paper, or something of that kind.

Judge Neilson—Then there would be no question.

Mr. Evans—That might be, of course, an inducement to the act; but my learned friend's question is, What was his object in showing this paper to the people that he did show it to?

Judge Neilson—I think that comes to the same thing. It doesn't affect the paper. It leaves the principal fact standing where it stood before.

Mr. Evans—Of course.

Judge Neilson—I think it has some bearing on the *quo animo* of the witness.

Mr. Evans—Yes; and we raise the very question, whether the *quo animo* can be shown by the witness to distinguish the act from the character that the law imputes to the act, to wit: he showed it that it might be seen; that is all.

Judge Neilson—I think he may answer.

Mr. Evans—Your Honor will be so good as to note my exception.

Mr. Fullerton—Seeing it would not accomplish his object. [To the witness.] Now, Mr. Tilton, you will state your object in showing the so-called "True Story" to the persons to whom you exhibited it. A. Well, Sir, I think, in order to state that with absolute correctness, I should first state why I wrote it—my object in writing it.

Mr. Evans—That I object to in answer to this question, and if any such question as that is put—

Mr. Fullerton—[To the Witness.] Well, answer the question I have put already.

Mr. Beach—[To Mr. Fullerton.] Put both together.

The Witness—I showed it there after it was written.

Mr. Evans—Am I to understand, if your Honor please, that the witness is confined in his answer to one question?

Judge Neilson—He is confined to one question.

Mr. Evans—His object in showing it.

Judge Neilson—[To Mr. Evans.] Apply your objection to that.

The Witness—My object in showing the paper to a select number of intelligent people was in order that I might get from them a judgment such as the great public at large would have rendered in case it had been published. I didn't know how it might affect the public, and I thought that if I gave it to one and to another, and to a dozen or fifteen or twenty intelligent persons, they generally would make up a judgment which would be to me like the judgment of a jury, or the judgment of the public.

### THE EXPECTED RESULT OF PUBLISHING THE TRUE STORY.

Q. Now you may state what object you expected to accomplish if that was published, or by its publication.

Mr. Evans—Wait a moment.

Judge Neilson—There is no objection to that; I think he may answer that.

Mr. Evans—If your Honor please, counsel asks him what object he expected to accomplish if it was published. Now, it never was published, and therefore there is not any act of his that needs explanation.

Judge Neilson—The limited way you called it out on cross-examination.

Mr. Fullerton—I will alter the question. What object did you expect to accomplish by writing that paper?

Mr. Evans—That matter has been introduced by them on their direct examination, and the witness has stated that it was written and proposed as a form of publication, and that it was read to Mr. Beecher, and that an interview took place concerning it. In regard to that I have asked no question, and the new matter of my cross-examination is only in respect to the exhibition of this paper.

Judge Neilson—Yes, if that is so, you (Mr. Fullerton) are not at liberty to put this question.

Mr. Fullerton—Why, Sir, he has inquired in regard to the "True Story;" he has read many parts of it to the witness, and then asked him whether they were correct, and he has received his answers. Now, it is proper for us to show what object he had in writing that paper—what was the condition of things at that time which in his judgment made it necessary. I could not ask that question until the contents of "The True Story" were made known by the other side. Now, they have been made known in part, and it is certainly desirable that this jury should know what object this gentleman expected to accomplish by the preparation of such a paper as that.

Judge Neilson—I think he may answer the question.

Mr. Evans—That does not displace the fact that it was a part of their original inquiry—what the object of "The True Story" was.

Judge Neilson—The use you made of it.

Mr. Evans—I made no use of it but to show what it was. It could not affect in the least his knowledge of what it was, nor his knowledge of the time it was prepared, concerning which he



has testified and regarding which I have asked him no question whatever.

Judge Neilson—You brought the contents to his knowledge and recollection as they had not been brought before.

Mr. Evarts—I don't know that. I don't know that it was in his recollection.

Judge Neilson—That it was brought to his recollection here is what I speak of.

Mr. Evarts—But that adds nothing to the author of the story that had composed it, and told why he composed it, and for what purpose, concerning which I have asked no single question, and now—

Judge Neilson—I think he may answer the question, Sir.

Mr. Evarts—Your Honor will be so good as to note my exception to the ruling.

Mr. Fullerton—Now, proceed to state, Mr. Tilton.

Judge Neilson—Gentlemen, you will please refrain from expressing any opinion on this point; it is not called for at all. Retain that in your mind until you get home.

Mr. Fullerton—Go on.

The Witness—My object in the preparation of that narrative was this: Mrs. Woodhull's tale, blasting my family, had been six weeks before the public; the policy of silence which we had originally agreed to meet it with was proving every day more and more disastrous, and carrying my house down to ruin in the public estimation. I undertook the preparation of a narrative which on being published would create in the public mind an impression like this, namely: "We never believed that the Woodhull story was true because it was so extravagant, but we always believed there was some foundation for it. Now, at last, we have the 'True Story,' and it is not as bad as originally reported, and it exonerates Mrs. Tilton." My only object was to pluck up by the roots Mrs. Woodhull's poisonous tale, and to plant in its place a story less detestable, and which would not criminate my wife.

#### ARGUMENT ON THE ADMISSION OF DR. STORRS'S ADVICE.

Q. What did you say to those gentlemen to whom you showed it at the time of exhibiting it?

Mr. Evarts—That I object to.

Judge Neilson—We will take that.

Mr. Evarts—Conversations with third persons.

Judge Neilson—Yes, Sir; the act of showing it, you having proved that act.

Mr. Evarts—Your Honor will be so good as to note my exception.

The Witness—Well, Sir; I said to Dr. Storrs, for instance, by whose advice I prepared it—

Mr. Evarts—What I object to, if your Honor please, is what passed between him and Dr. Storrs.

Mr. Fullerton—Go on; omitting that.

Mr. Evarts—No; I object to any narrative of what passed between him and Dr. Storrs as having been already introduced on direct examination.

Judge Neilson—Well, pass him; I think that is so.

Mr. Evarts—I have not asked a single question concerning him.

Judge Neilson—I think so; I think we will leave the interview with Dr. Storrs where you (Mr. Fullerton) left it.

Mr. Fullerton—If your Honor please, I have not left it at all yet. I want to show he took that paper to Dr. Storrs.

Judge Neilson—That paper?

Mr. Fullerton—I want to show what he said to Dr. Storrs at the time he left it. They proved he showed it to Dr. Storrs, and I have a right to prove what he said at the time of exhibiting the paper—the act. They took that proof *cum onere*, and they opened the door and they must take the consequence.

Judge Neilson—They proved it was exhibited to Dr. Storrs.

Mr. Fullerton—Certainly.

Judge Neilson—Then you may ask the question.

Mr. Evarts—This witness had been introduced to this inquiry, and what passed between him and Dr. Storrs, so far as it was lawful. Now, this paper was shown to Dr. Storrs. I asked him for a list of the people he showed it to, and he names Dr. Storrs among them. What right does that give them to go into the further inquiry concerning an interview between him and Dr. Storrs, which interview they have introduced and followed, and concerning which I took up no inquiry.

Judge Neilson—[To Mr. Evarts.] This interview you referred to in your cross-examination, and had him state the fact.

Mr. Evarts—I referred to that interview! Now, we will see the fact. It is on page 427 of the pamphlet.

Judge Neilson—[To Mr. Evarts.] Can you recall my attention to what took place in regard to the meeting with Dr. Storrs on the direct and then on the cross? I suppose I can take your recollection for it; I don't like to trust my own.

Mr. Evarts—The difficulty is I cannot take mine, and I therefore have the text here before me, at page 427 of the pamphlet.

Judge Neilson—If the interview with Dr. Storrs is there, you ought not to go further.

Mr. Evarts—I read from the direct. The witness is now narrating a conversation with Mr. Beecher:

I told him that his suggestion of publishing a portion of that covenant had inspired me to the preparation of a document, in which the entire covenant should be included, together with other papers. I told him, furthermore, I had consulted on that subject with Rev. Dr. Storrs, of this city; that I had gone to him as a good man, a calm man, and a wise man, and had asked him what, in his judgment, the public sentiment of Brooklyn required at my hands in this business, and that Dr. Storrs had advised me to act calmly; to put together the facts and papers and documents in the shape in which they could be proved, and then submit them to him, and after I had given him the facts in that accurate shape, he would give me the best judgment that he could form. I told Mr. Beecher that, in pursuance of that suggestion, I had once or twice seen Dr. Storrs, and that on one occasion I had requested Mrs. Tilton to go with me, but she had preferred not to do so, but had written a statement or letter which I had shown to Dr. Storrs; that I had included that letter thus written by Mrs. Tilton to Dr. Storrs; that I had included it in the proposed statement which I meant for the public.

Judge Neilson—That is on the direct?

Mr. Evarts—Yes, Sir; and there I left it.

Judge Neilson—[To Mr. Fullerton.] I think you had better pass that.

Mr. Fullerton—If your Honor please, I wish you would hear me. This is what Mr. Tilton narrated to Mr. Beecher: it is not the interview between him and Dr. Storrs, except as it passed through that gentleman. Your Honor will perceive there is a very great difference between this evidence and what I now propose to give. Following that up, on the cross-examination, my learned friend on the other side put the question to Mr. Tilton: "Did you show that paper to Dr. Storrs?" He had already testified that he had told Mr. Beecher he had done so, and my learned friend on the other side proved that he had done so. I had not proved it. I could not prove it. Now, having proved that he had this conversation with Dr. Storrs, in fact, and having proved that he presented this document, the so-called "True Story," to Dr. Storrs, I propose to follow it up and avail myself of that rule which is known to all men, that the act of a man may be qualified by his words spoken at the time.

Judge Neilson—Well, Mr. Everts, that last consideration, I think, deserves an answer; what is it?

Mr. Everts—Very well, Sir.

Judge Neilson—First you had the narration to Mr. Beecher of an interview with Dr. Storrs; then we have, on your examination, the fact that that paper was presented to Dr. Storrs, and then we have invoked the rule that when an act takes place the conversation that forms part of the act must be given, and that is the rule he invokes.

Mr. Everts—I have a narrative from this witness, which he is not to impugn, of his statement concerning an interview with Dr. Storrs, in which, as my learned friend now concedes, he stated that he had shown Dr. Storrs this paper, and he has given in his narrative, which he cannot impugn (although it does not bind me, it does bind him), to what occurred when he so showed it; and I, in my cross-examination, have not touched what occurred when he so showed it.

Judge Neilson—Except that he showed it.

Mr. Everts—I, having had a draft and a copied manuscript, undertook to find out the circle of people that he showed it to, and Dr. Storrs is introduced into my inquiries, and into his answers only as one of the persons that he showed it to. He might have left it indistinct whether it was the draft or the copy; whether it was an incomplete or a completed statement that was shown to Dr. Storrs, and I have identified the paper that he has spoken of as having been shown to Dr. Storrs, and nothing else. And now, because I have identified the paper that he has spoken of as having been shown, and being attended with conversation, and have confined myself rigidly to the identification of the paper, my learned friend says that he is at liberty to give conversations that attended the exhibition of the paper; that is the proposition. I apprehend that there is no foundation for that proposition in this case, because he himself has put in evidence in a shape that binds him, and has introduced to my cross-examination this conversation, which I abstained from cross-examining him upon. Then I only identified the paper as having been shown to Dr. Storrs.

Mr. Fullerton—Your Honor can now see the force of the

learned gentleman's observation, that he could not trust to his own memory as to what took place.

Mr. Beach—[To Mr. Fullerton.] Will you permit me, Mr. Fullerton, before you go on with this examination, to read a portion of the testimony? Mr. Everts put this question [reading]:

Q. Now, how early did you begin the writing or drafting of the original? A. I should think somewhere about the 20th of December, perhaps.

Q. How are you able to fix that date, and with what assurance? A. I fix that date by the date of a visit which I made to Dr. Storrs, to which I carried Mrs. Tilton's letter of December 16th.

Q. Yes; well, you mean that the 20th of December was the date of the visit to Dr. Storrs? A. No, Sir; I think the date of that letter, namely, December 16th.

\* \* \* \* \*  
Q. And you then had an interview with Dr. Storrs, had you? A. I had two or three interviews.

Q. Well, you had one, then, on the 16th of December? A. Yes, Sir.

Q. And at that time you had not commenced the draft, had you? A. I don't remember whether I had commenced it, or not.

Q. You cannot say that you had any part of the draft with you when you went to Dr. Storrs? A. No, Sir; I don't recollect.

Q. Now, when next did you see Dr. Storrs? A. I don't remember the date.

Q. Be as clear as may be? A. I saw Dr. Storrs three or four times; I don't remember the dates of these interviews. One was in November, one was in the early part of December, and another was, perhaps, towards the middle or towards the close; I cannot recollect.

Q. My only point at present is to know what state this "True Story," in draft or completed copy, was when you showed it to Dr. Storrs? A. I read to Dr. Storrs the loose sheets of the substance of the whole paper; I don't remember on what day I did it.

Q. Did you read then from this physical paper that has been called the draft? A. Physical paper called the draft?

Q. Yes, Sir. A. Certainly; yes, Sir.

Q. You did? A. I read to him the paper which was afterwards copied in a more cleanly way—

Mr. Everts—Well!

Mr. Fullerton—One moment.

The Witness—And which were stitched together and constitute what you call the pamphlet.

Mr. Fullerton—Now, if your Honor please—

Mr. Everts—Wait one moment.

Mr. Fullerton—No, when it comes your turn.

Mr. Everts—No, I will ask him (Mr. Beach) to read.

Mr. Fullerton—I will consent to that, because it will be part of my speech and not part of yours.

Mr. Beach—I will read anything the gentlemen wishes me to read [reading]:

Q. Called the completed copy? A. Yes, Sir.

Q. Then this draft was the paper which you had when you showed Dr. Storrs any part of it; that is, when you showed anything that was in the shape of a composition called the "True Story?" A. Well, Sir, I am not sure, but think I had two interviews with Dr. Storrs, one in reference to the documents themselves, before they were joined together in a draft.

Q. That might be, but that I am not inquiring about. A. What is it you are asking me about. Mr. Everts?

Q. I want you to fix the date of the interview with Dr. Storrs in which you had physically present the draft, or any part of the draft of the "True Story?" A. Well, Sir, I cannot fix the date.



Q. You cannot? A. No, Sir.

Q. But it was subsequent to the 16th of December? A. To the best of my recollection.

Mr. Evarts—That is exactly what I want.

Mr. Beach—The previous question had been in regard to the time.

Mr. Fullerton—Now, your Honor can plainly and distinctly see the attitude which they occupy in reference to this question. It did transpire on the direct examination that a paper was prepared called the "True Story," but its contents were unknown. It was at one time supposed to have been destroyed—the whole of it—and I so announced it. Afterwards, your Honor will bear in mind, having discovered that a few loose leaves of the draft were in existence, I stated that fact to the Court.

Mr. Evarts—Not draft.

Mr. Fullerton—Yes, Sir. On the cross-examination the learned counsel upon the other side read to the witness what purported to be a copy or the original, I don't know which, of the "True Story," and the witness was interrogated from time to time as to whether the parts thus read were correct, and whether they constituted a part of that "True Story," and your Honor recollects his answer. Then the learned counsel called for those few leaves of the original which had been preserved, and which were in our possession, and being furnished to him he read them in evidence. He didn't stop there. He went on to question the witness as to whom he had exhibited that "True Story" when it was in existence as a whole, and among others he mentioned the name of Dr. Storrs. Now, your Honor will perceive that when I left the matter upon the direct examination, the contents of the paper not having been made known, it didn't operate either one way or the other as against the cause of the plaintiff. But when the counsel makes known the contents of the paper, and the witness is to be judged by what he has written, then, if he shows that that paper has been exhibited to A, B and C, it certainly is my province to show what he said at the time of the exhibition of that paper. This question arises upon what the counsel on the other side has elicited from the witness. Why, Sir, I never heard it disputed before but that a man could prove what he said at the time of doing an act. The words qualify the act.

Judge Neilson—That will be admitted. The learned counsel on the prior discussion spoke of it as a verbal act, that is, being part of the act itself.

Mr. Fullerton—When this paper was taken by the witness to Dr. Storrs and it was read to him. That they proved; that I didn't prove.

Mr. Evarts—That you proved.

Mr. Fullerton—No, Sir; I did not prove it. The contents of that paper were made known to Dr. Storrs by the witness, and that fact has been proved by the other side, and not by us at all. Now, when he read that paper we have a right to show what he said in regard to it. It is his words qualifying his act.

#### DR. STORRS'S ADVICE ADMITTED.

Judge Neilson—Well, I think I will allow the question, Mr. Evarts.

Mr. Evarts—On the basis of this last statement, that they

never proved the paper was shown to Dr. Storrs. The basis is suggesting this was the day, and that all I undertook by a cross-examination was to find out whether it was a completed paper or a draft, and what the date was, and that I limited my inquiry to that.

Judge Neilson—I think we will take the answer, Sir.

Mr. Evarts—Your Honor will be so good as to note my exception.

Mr. Fullerton—Now, go on and answer. What did you state to Dr. Storrs at the time of reading that paper to him?

Mr. Evarts—I understand your Honor confines the right of the inquiry and the answer of the witness to the spoken act that accompanied the delivery of the paper to Dr. Storrs.

Judge Neilson—In that very connection.

Mr. Evarts—In that very connection, and not to include what passed in conversation between him and Dr. Storrs?

Mr. Beach—Yes; it includes part of the conversation at the time.

Judge Neilson—As part of the act.

Mr. Beach—Yes, Sir.

Mr. Evarts—Well, if your Honor please, there is a vast difference between a witness saying "I have brought you this story to read, Dr. Storrs"—being an accompanying verbal act, and then a conversation between him and Dr. Storrs concerning the contents of the paper, and this, that and the other.

Judge Neilson—He don't inquire as to what Dr. Storrs said.

Mr. Evarts—No, so I understood.

Mr. Fullerton—Go on and state—

Judge Neilson—What you said to Dr. Storrs in the act of presenting the paper.

Mr. Fullerton—Go on and answer my question.

Judge Neilson—Read the question; sometimes the witness don't remember the question.

Mr. Fullerton—The question is a very simple one, has been put two or three times, and is well understood.

Mr. Evarts—And the Judge's instruction to the witness was very definite also, and I understood you to countermand it.

Mr. Fullerton—The Judge has not instructed the witness. All the Judge said, that was not a part of the present question, but will be a part of the next one.

Judge Neilson—Read the question to the witness.

THE TRIBUNE stenographer [reading]: "Now, go on and answer—what did you state to Dr. Storrs at the time of reading that paper to him? A. As soon as I had read the paper there was a sudden pause—a silence."

Mr. Evarts—Now, if your Honor please, I object to his going any further. It does not appear that anything was said, except reading the paper, and whatever afterward occurred must have been a discussion about it.

Judge Neilson—Go on.

Mr. Evarts—Note my exception if it is allowed.

The Witness—Dr. Storrs turned to me and said, "Mr. Tilton, before I speak"—

Mr. Evarts—I object to what Dr. Storrs said.

Judge Neilson—It is only taken with a view to elicit what else was said. Go on.

The Witness—Dr. Storrs turned to me and said, "Mr. Tilton,

before I can consult with you on this subject or give you any advice worth anything you must answer me one question." I said, "What is it?" He then said, "I want you to tell me whether this narrative which you have read is the plain and honest truth—what is called in a court the truth, the whole truth and nothing but the truth." I said "I will answer that question if you will promise not to ask me any further questions on the subject." "Well," said he, "I will not catechize you against your will or wish." I then said, "It is not the whole truth, it is only a part of the truth; it is an understatement, but it is all I am willing to give to the public." "Then," he said, "I advise you not to publish it."

Mr. Evarts—Well, now, I move to strike that out, Sir, as not being any verbal act of the witness accompanying the reading of the paper.

Judge Neilson—I think I will allow it and note your exception.

Mr. Evarts—Note my exception.

Q. Do you now recollect any other person to whom you showed the True Story than those you named in your cross-examination? A. Well, Sir, I don't recall at this moment the persons named in my cross-examination.

Q. Well, there was Mr. De Witt, and Mr. Clarke, Mr. Dunkley, Mr. Bell, Mr. Tracy, Mr. Woodruff, Mr. Harman? A. I don't think at this moment of any others. There were others though. I showed it to quite a large circle of persons—perhaps twenty or twenty-five—with a view of getting from them a judgment such as I supposed the public would render if it were published—

Mr. Evarts—I suppose that is not admissible, if your Honor please.

Mr. Beach—That has been already admitted, and under your objection. I don't see why the objection should be renewed.

Mr. Evarts—I should be permitted to repeat it. It is either admissible or not admissible.

Mr. Beach—Well, it was admitted under your objection.

The Witness—You remember, Mr. Fullerton, that I showed it to Mr. Beecher and he replied that it would kill him.

Mr. Evarts—Now, I ask to have that struck out.

Judge Neilson—Yes, because we have it before.

Mr. Evarts—And because it was not responsive to any question.

Mr. Fullerton—It was responsive to a question.

Judge Neilson—Well, you have it on the minutes before.

Mr. Evarts—Well, I ask to have it struck out now as illegal.

Judge Neilson—Yes; it need not be repeated; it is on the minutes already.

Mr. Evarts—I object to this here as an improper statement.

Mr. Fullerton—It is not an improper statement, because in reading the names of the persons to whom he read this paper, I omitted Mr. Beecher, and he reminded me of it, and it was proper for him to do so.

Mr. Beach—Then the answer was proper, or else it would appear that the witness had omitted in his enumeration of the witnesses Mr. Beecher.

Judge Neilson—Well, that is proper to mention Mr. Beecher.

Mr. Evarts—Well, does this stand or not?

Judge Neilson—It stands so far as in answer to the question—it stands so far as to show that he mentioned those names; that is all.

Mr. Evarts—The rest is struck out?

Judge Neilson—Yes, it is struck out, because it was mentioned before.

Mr. Evarts—It is struck out.

# OBJECT OF MR. TILTON'S INTERVIEW WITH MR. HALLIDAY.

Mr. Fullerton—It is struck out of this place, but it is in another one. [To the witness.] You were asked in reference to the conversation that you had with the Rev. Mr. Halliday, and you were asked whether you did not state to him that you called to see him, at the request of Mr. Moulton, to speak to him concerning the Woodhull scandal. Do you recollect that conversation with Mr. Halliday? A. I recollect the substance of it.

Q. What was the substance of it? A. The substance of it on my part was the denial of the Woodhull story and the vindication of Mrs. Tilton, but I dropped some words in reference to Mr. Beecher which troubled Mr. Halliday somewhat. I don't know what they were; cannot recollect them very distinctly.

Q. Do you recollect a letter in evidence in which Mr. Beecher says that your interview with Mr. Halliday was disturbing? A. Yes, Sir.

Q. How long prior, if prior, to the date of that letter was this conversation? A. My impression is that the conversation immediately preceded the letter; the letter grew out of the conversation. Mr. Halliday went to Mr. Beecher, and Mr. Beecher went to Mr. Moulton, and Mr. Moulton came scolding me.

Q. And what was your object in having that conversation with Mr. Halliday?

Mr. Evarts—That I object to.

Judge Neilson—We will take it, Sir.

The Witness—Am I at—

Judge Neilson—Yes, Sir.

Mr. Evarts—Your Honor will note my exception.

The Witness—The object was this, Sir: It was to blot out from his mind, as the second officer of Plymouth Church, the idea that there could be any possible truth in Mrs. Woodhull's story against my wife. I said to Mr. Halliday what I said in substance to other parties. I denied it.

Mr. Evarts—That I object to, if your Honor please, and ask to have it struck out—"I said to Mr. Halliday what I said in substance to other persons." The inquiry is concerning what he said to Mr. Halliday and does not admit of generalization or what he said to other persons.

Judge Neilson—I think the question did not call for it. Strike it out.

# MRS. TILTON'S CONFESSION AS STATED BY MR. TILTON OBJECTED TO.

Mr. Fullerton—Well, Sir, it is quite immaterial. [To the witness.] On your cross-examination this occurred, Mr. Tilton. [Reading]:

Q. Upon the occasion of your attendance and



hearing and answering questions before the Committee of the Church, please say if this occurred: Did you, upon being asked this question, "You say, Mr. Tilton, for a year after what you stated as Mrs. Tilton's confession she insisted to you that she had not violated her marriage vow?"—in answer to that did you say, "Yes; Elizabeth was in a sort of vaporous-like cloud; she was between light and dark; she could not see that it was wrong. She maintained to her mother in my presence that she had not done wrong. She cannot bear to do wrong; a sense of having done wrong is enough to crush her; she naturally seeks for her own peace a conscientious verdict; she never would have had these relations if she had supposed at the time that they were wrong; Elizabeth never does anything that at the time seems wrong; for such a large moral nature there is a lack of a certain balance and equipoise; she has not a will that guides and restrains, but Elizabeth never does at any time that which does not have the stamp of her conscience at the time upon it"—did you say that in answer to the question that has been read to you? A. I said something like that; I don't know how accurately it is reported.

Now, I want to ask you this question: What confession was it that you referred to giving that answer?

Mr. Evarts—Confession?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Well, wait a moment.

Mr. Fullerton—You can have the paper.

Mr. Evarts—Now, you ask what that confession was?

Mr. Fullerton—Yes, which was the subject of conversation there.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—Now, if your Honor please, the question arises in this way: I asked the witness whether he, in answer to a certain question, made a certain answer—it being my right to inquire concerning what he had said at other times, and the whole point of the inquiry being whether he had or had not said so and so. That question, as in the examination before the Church Committee, is this: "You say, Mr. Tilton"—calling his attention to something he had said—"You say, Mr. Tilton, for a year after what you state as Mrs. Tilton's confession, she insisted to you that she had not violated her marriage vow;" and then he goes on and makes the long answer. Now, under cover of that inquiry, which elicits from him the fact that in answer to that question he had made this answer, my learned friend asks him what that confession was, being a direct offer to prove a confidential communication between his wife and himself.

Judge Neilson—[To Mr. Fullerton.] Let me hear you on that.

Mr. Evarts—Merely because I have asked a question whether on being asked a certain question he made a certain answer. He could have said yes or no, and that would have been the end of it.

#### ARGUMENT OF MR. FULLERTON.

Mr. Fullerton—Well, it would seem extraordinary, Sir, if they can talk about confessions, and ask questions in regard to confessions, and after getting answers that suit them, that I cannot go on and pursue the same line of inquiries.

Judge Neilson—No; the Church Committee asked him questions and his answer is recorded here, and then the learned counsel interrogates him to see whether that question was put and that answer made, and he does so remember, and beyond that the confession is referred to.

Mr. Fullerton—Why, Sir, it is precisely the same as if he put

the question to the witness whether he had not stated such a thing the day before, or the same day that he was examined and received that answer.

Judge Neilson—Yes, the form is not material, of course.

Mr. Fullerton—Certainly. Now, he has asked him a question about a certain confession. I want to know what confession he alludes to—what was embodied in it. It is certainly very plain that I have a right to pursue this upon the re-direct examination to know what he meant by what he stated on the cross. They are very sensitive now about confidential communications. They were not so a short time ago when they pursued inquiries in regard to them.

Mr. Evarts—I never asked anything about a confidential communication.

[Last question read by THE TRIBUNE stenographer.]

Mr. Fullerton—I don't ask what the confession was, I ask what confession he referred to. I am pursuing the re-direct examination with reference to a subject opened upon the cross. It is not now for them to say that it is a confidential communication and that it cannot be exposed.

Judge Neilson—Isn't it the same precisely as if you in your interrogatory referred to a conversation of the day before, and asked him: "Didn't A. B. meet you and put you a question, and didn't you to him make this answer, and in that answer didn't you refer to a confession?" Then, may he not ask what the confession was, and if—

Mr. Evarts—If the inquiry is confined. Here is a question asked him, he then is asked a question concerning something that he had said—"You say, Mr. Tilton, for a year after what you stated as Mrs. Tilton's confession she insisted to you that she had not violated her marriage vow?" Now, that is the only question that is put to him, whether—the point of the inquiry is, "for a year after what you have stated as a confession, did she or not—have you or not—did you not say that, for a year after what you state as Mrs. Tilton's confession, she insisted to you that she had not violated her marriage vow;" and the answer is read to him, and he says substantially: "I gave that answer to that question." Now, of course it makes no difference whether it was yesterday or a month before, or anything of that kind; but the present inquiry, as I understand it, undertakes to show by this witness, as a matter of fact, a confession.

Mr. Beach—Oh! no, Sir.

Mr. Evarts—Well, if it is limited to inquire as to the date of the supposed confession to which he referred, that is another matter.

Judge Neilson—It refers to the character of the confession evidently. This question refers to the character and nature of the confession. I think we may take it.

Mr. Evarts—That is what I say he has no right to inquire about. I am only fixing the date of this witness insisting upon his wife's not having violated her marriage vows—a period of a year after an alleged statement by him.

Mr. Fullerton—It was more than the date the counsel was after.

Mr. Evarts—It was the year's occurrence of this witness, insisting that his wife had not violated her marriage vows, not

withstanding his statement that she had made some confession.

Mr. Fullerton—After reading the question that was put to the witness before the Committee, and his long answer, he then put this interrogatory: "Did you say that in answer to the question that has been read to you?" and he answered that he did. Now, the counsel on the other side expects hereafter to hold Mr. Tilton responsible for what he said there in answer to that question, and he means to argue that the wife of the plaintiff had not been guilty of adultery; that she had committed no crime; that she had not violated her marriage vow. Well, Sir, in order to get at the full meaning of this question and properly to interpret the language then employed, we must know what had taken place theretofore with regard to the confession; we must learn the nature and the extent and the scope of the confession, or else how are we to understand the meaning of these words? The gentlemen certainly cannot eliminate from a long examination a single question and a single answer and hold us to sentiments therein expressed, without giving us an opportunity of laying before this jury the context to show what preceded it. Why, your Honor will perceive that this question breaks right into *medias res*; that something has gone before it, which we do not understand and which we cannot understand unless I am permitted to interrogate this witness. The word confession here is introduced, and it is introduced in this way—"Did you upon being asked this question"—"You say, Mr. Tilton, for a year after what you stated as Mrs. Tilton's confession, she insisted to you, etc., etc., etc." Now, Mr. Tilton is made there to have stated something in regard to the confession. I want to get what he did state in regard to that confession before that inquiry was put to him, in order that we may properly interpret this language here employed. The counsel upon the other side, if he sees fit to walk upon dangerous ground, must take the consequences of it. He did put these inquiries; he got that answer, and he means to make use of it hereafter, and there is no way for us to turn his weapon aside, except it is to put in evidence, here, all that occurred upon that subject, in order that the jury may have a clear and comprehensive understanding of the whole matter that took place there.

#### GENERAL DISCUSSION.

Judge Neilson—I think I must disallow the question, Mr. Fullerton. I overrule it. It may seem hard to you, but I think I will have to do it.

Mr. Fullerton—I think it is harder upon the law than it is upon me. Still, I submit.

Judge Neilson—Well, I admit it is a nice question that is worthy of consideration, but I think I should overrule it.

Mr. Beach—They accede to the question, Sir, so far as it calls for the date or the time of the confession.

Judge Neilson—Well, that is not the scope of his inquiry; it goes beyond that.

Mr. Beach—Well, it may go beyond that. You may restrict the answer, but you certainly will allow us the answer, so far as it is conceded by the defense.

Judge Neilson—Within such limits as he consents to, of course I will.

Mr. Fullerton—What does your Honor understand my question is?

Judge Neilson—I understand your question calls for the character of that confession. Your argument maintains that at any rate.

[Last question read by TRIBUNE Stenographer.]

Mr. Fullerton—Does your Honor rule that out?

Judge Neilson—Yes; on the assumption that it would call for the terms, contents or substance of the confession; that is its character.

Mr. Beach—We except, Sir.

Mr. Fullerton—Well, Mr. Tilton, what else took place—

Mr. Beach—[To Mr. Fullerton.] Don't abandon it.

Mr. Fullerton—No; I won't abandon it. I am going at it again. [To the witness.] What else took place at the time that question and answer was put and made before that Committee?

Mr. Evarts—That I object to.

Judge Neilson—That is proper.

Mr. Evarts—What else took place?

Judge Neilson—Certainly. You refer to a certain occasion, before a Committee or not—call his attention to a question and answer. He has a right to state anything else that occurred on that occasion.

Mr. Evarts—On the whole occasion?

Judge Neilson—In that connection.

Mr. Evarts—Ah! If there was any qualifying question and answer to my point or inquiry, which was solely to this point—"Did you or not state that for a year after an alleged confession to you, you said that your wife did not think she had violated her marriage vow?" If there was any following question or attending question that bears on that, that is proper.

Judge Neilson—The question stands as if you had taken a part of a conversation, leaving them at liberty to call for the residue of it that is germane to the matter.

Mr. Evarts—On that point.

Judge Neilson—Yes; connected with that point.

Mr. Evarts—Yes; but my learned friend doesn't confine himself to that. Your Honor understands the point of these inquiries that are made to a witness situated as this gentleman is. It is that he has made statements with deliberation, or casually, as may be, in conversations or in more deliberate examinations, that are inconsistent with the view that he presents now presently on the stand. What he says here in court is the basis of what his actual testimony is, and the basis of the inquiries in regard to contradictory views. Now, the point is, that he has made contradictory views, and the question is wholly whether he has or has not made them. Not whether he has made, in other circumstances, on other occasions, in reference to other matters, confirmatory declarations; that he is not allowed to give, but the point also of the contradiction is not permitted to be varied, by proving which is the true and which the false. The question is not which is the true or which the false, so far as it is raised by these inquiries concerning contradictory statements. The fact of the contradictory statements is an imputation upon the integrity of the story one way or the other.



## MR. TILTON'S STATEMENT OF THE CONFESSION RECEIVED.

Judge Neilson—Well, now, you having taken part of what he said on a certain occasion in the form of answer to a question, may he not interrogate as to what else took place on that occasion in reference to that subject matter?

Mr. Evarts—To that question and answer, that I agree—whatever qualifies and makes appear correctly; whatever this witness said concerning his wife's persisting that she had not violated her marriage vows, that comes in within the colloquium in which this question and answer occurred. But my learned friend has asked him what else occurred on that occasion, to wit, the occasion of his appearance before this Church Committee.

Judge Neilson—I think I will allow the question, Sir. Go on. Mr. Fullerton—Go on, Mr. Tilton.

Mr. Evarts—If your Honor please, the case of *Rouse v. Whitehead*, as I am told, in the Court of Appeals, is decisive upon this point, unless your Honor intends to confine it to a qualification of this question and answer.

Judge Neilson—It is so confined, no doubt; but yet this question might call for a more extended answer, as, for example, being asked what else took place upon that occasion, or what took place, he might answer some general matter tending to characterize the occasion or the situation.

Mr. Evarts—Well, if your Honor please, I am not asking him what took place before that Committee; I am asking him whether he has not stated to somebody somewhere—it makes no difference where it is—so and so. Now, it is undoubtedly fair and just that whatever be said in that colloquium on that subject, qualifying his statement there given, and a part of the statement concerning which I am inquiring, may be brought in.

Judge Neilson—This very question might reach an instance where a man, on being interrogated, makes such an answer as you drew out, and where he was then forcibly or otherwise interrupted and prevented from saying anything more; and the subsequent revelations are sufficient to show me that I cannot rule out this testimony. The general proposition is correctly put by you, but it does not relate to this.

Mr. Evarts—But, if your Honor please, is not the rule the other way—that this question might include everything that occurred during the examination, and that the question must be pointed, therefore, to what occurred in reference to this particular point of inquiry, or otherwise it is inadmissible.

Judge Neilson—Of course it must relate to this subject matter.

Mr. Evarts—Well, I object to the question as not limited in its terms to the inquiry concerning this question and answer. The case of *Rouse v. Whitehead*, 25th of New-York, 170, reversing 25th Barbour, 279, is to the point that the question is confined to those parts which qualify or explain the statement already proved; and this question I understand to be a general one, and therefore exceptionable.

Mr. Fullerton—No; my question is in harmony with that decision. All that I wish to know is what else was said at that time, in that examination, with regard to the subject matter embodied in the question and inquiry.

Judge Neilson—It is a natural, elementary principle of law, not needing any decision from the Court of Appeals; a business man might recognize it. Now, confine yourself within that.

Mr. Evarts—The trouble is the question is not confined. Your Honor gives directions.

Mr. Fullerton—I will put a question. [To the witness.] Mr. Tilton, having heard the question and answer embodied in the question put by Mr. Evarts upon the cross-examination, I ask you what further was said by you before that Committee with reference to the subject matter of that question and answer? A. Well, in the first place, Mr. Fullerton, it seems to be forgotten that when Mr. Evarts the other day put to me the question whether or not I had said that to the Committee—whether, or not, I had said to the Committee that Mrs. Tilton had insisted that she had not violated her marriage vow—it seems to me, with all respect, both you gentlemen have forgotten that I said the substance of my remark to the Committee was that, during that time she thought she had not violated her marriage vow; it did not appear to her that she was violating her oath—that it seemed to her as if her mind were in a maze. I made that qualification.

Mr. Fullerton—No, I had not forgotten it, at all.

Mr. Evarts—That appears in the answer.

The Witness—Yes, then as to what further transpired in the committee, the main point which does not appear in the examination as reported, was the statement of my charge against Mr. Beecher, before that committee, of criminal relationship with Mrs. Tilton; the confession of the same, made by Mrs. Tilton in July, 1870, and made by Mr. Beecher, half a year afterward to myself, to Mr. Moulton, to others. I do not know that I apprehend your inquiry.

Q. It is to be inferred from the question which, it is alleged, was put to you before the Committee, to wit: "You say, Mr. Tilton, for a year after what you stated as Mrs. Tilton's confession, she insisted to you that she had not violated her marriage vow?" Had you stated anything before that Committee, with regard to Mrs. Tilton's confession, which led to that question, and if so, what had you stated?

Mr. Evarts—I do not object to an inquiry whether he had made a statement concerning her confession which was alluded to, but then the statement of what she had stated I object to.

Mr. Fullerton—That is to say, he does not object to the question that is put, but would object to it if it was put in another way. I do not see the propriety of the observation.

Mr. Evarts—Well, if it is limited; that is the point. I won't object to what is legal, but if you make it larger than the law allows, then I do object.

Mr. Fullerton—Well, the counsel must judge of its size by what it appears to be. I have put the question, and he knows exactly what it is. If it is objectionable, let us have the objection; and if not, let us have the answer.

Judge Neilson—Well, it amounts to a suggestion that the witness will keep within the limited interpretation of your question.

Mr. Fullerton—Well, then it is not an objection to the question, but an objection to the answer that has not been given.

Judge Neilson—It is a suggestion.

Mr. Evarts—I think, if the question is read, your Honor will see that it is objectionable.

Judge Neilson—Like most questions it might be abused, no doubt.

Mr. Evarts—We will have it read, if your Honor please.

Mr. Fullerton—That is no reflection on the question.

Judge Neilson—But it justifies the counsel in making a suggestion on the subject. [Question read.]

Mr. Evarts—"And if so, what had you stated?"—that is the objectionable part.

The Witness—May I not answer that?

Mr. Fullerton—I ask him if he stated anything, and if so, what he stated?

Judge Neilson—Anything that led to that.

Mr. Fullerton—Yes, Sir.

Judge Neilson—Go on.

Mr. Evarts—Your Honor will note my exception to the question.

The Witness—I had stated to the Committee in writing, with my oath appended, the substance of the confession made by Mrs. Tilton to me in July, 1870, and made by Mr. Beecher to me in December and January following, made to Mr. Moulton and to other persons.

#### DISCUSSION OVER MR. TILTON'S ANSWERS TO THE COMMITTEE.

Q. What was that confession? A. It was a confession—

Mr. Evarts—What is this? I object.

Judge Neilson—What did you state there before the Committee?

Mr. Evarts—No; I object to that, if your Honor please.

Judge Neilson—He may state that; that is a part of the subject matter. What did you state there in that connection?

Mr. Evarts—Concerning her confession?

Judge Neilson—Yes.

Mr. Evarts—There your Honor has directly the point. All my inquiry was, "Did you answer this question?" [giving it]—and the question has nothing to do with any inquiry about the truth or falsehood of the confession or its terms, but only whether for a year after that occurrence, whatever it was, she insisted she had not violated her marriage vow.

Judge Neilson—What did he state to the Committee on that subject, which led to that inquiry?

Mr. Evarts—Not exactly that, if your Honor please; I don't think your Honor allows that. But, whether he stated something, and if so what, which led to that inquiry. His answer to that was, "I had stated a confession." That is in the question we start with, from the Committee's transactions. It is in reference to the fact that he had said something about a confession; that is the witness's course—the witness's statement in regard to his wife's declaration, after the confession is brought in. Now, if your Honor please, the witness, under cover of a narrative conveyed to Mr. Beecher, has been allowed to state what he delivered to Mr. Beecher as being a confession, but has not been allowed to state what did

occur between Mrs. Tilton and himself. Now, if your Honor please, what right has this witness to answer interrogatories in his own behalf that are simply reproductions of what he has stated elsewhere?

Judge Neilson—Simply because on the occasion respecting which you make the inquiry, and on the same subject, he may have made a further or other statement which led to that inquiry. That is all.

Mr. Evarts—But, my inquiry was, to show before the Committee whether in reference to what he has already said he has not also said so and so. And he answered that he had.

Judge Neilson—And then they ask what else he said.

Mr. Evarts—No, not exactly that, if your Honor please.

Judge Neilson—It seems so to me.

Mr. Evarts—Not in connection with that point, which was his statement concerning his wife's declaration that she had not violated her marriage vow. Anything in qualification of that is one thing. All that we start with is whether, after supposed confession, "which you have referred to, you have not said that for a year she denied that she had violated her marriage vow." Now, if your Honor please, when the witness answered as he did, "I did say so," does that allow the counsel to ask what he had formerly said?

Judge Neilson—No; on that occasion.

Mr. Evarts—Well, on the one occasion—what he had said concerning her violating her marriage vow.

Judge Neilson—When you inquire as to a part, they may inquire as to the rest of the statement on that subject—the subject being material.

Mr. Evarts—On the same occasion, and as a part of the same conversation.

Judge Neilson—Yes.

Mr. Evarts—Now, this affair lasted several days; it must appear that they are limited in the inquiry as to what was said on that occasion when this answer was made. I understand that your Honor does not intend to hold a different rule of law from what we are insisting upon. I can see that a qualification then and there made to this Committee, explaining to them what he meant by saying that his wife insisted for a year that she had not violated her marriage vow, would be within the purview of the law.

Judge Neilson—Suppose he makes a statement on Monday evening, and, growing out of that, an interrogatory is put on Tuesday noon, all on the same subject, except as affecting the convenience of the Committee in adjourning.

Mr. Evarts—But, if your Honor will be good enough to notice, anything that qualifies this witness's statement, that his wife had insisted for a year that she had not violated her marriage vow would be apposite to my inquiry, and a qualification of his answer. But this inquiry does not touch that at all. The very inquiry concerning which I now ask your attention, assumes that he had alleged a confession to the contrary; and the only point of inquiry is "Did you or not say that for a year after the alleged confession she insisted that she had not violated her marriage vow;" and he answers, he did. Now, anything that qualifies that is admissible, but any reproduction of the



confession, as then stated or not then stated, has no appositeness to my inquiry; and I ask your Honor's attention to the case of *Downs vs. N. Y. C. R. R.* (47 N. Y., p. 83), which holds that the declaration must be simultaneous and connected. You must never overlook that point, if your Honor please, that the inquiry is introduced to show an inconsistent statement of the witness.

#### SOME OF MR. TILTON'S WORDS TO THE COMMITTEE RECEIVED.

Judge Neilson—You had better call his attention to the question, as some time has elapsed since the question was put.

Mr. Fullerton—On the cross-examination Mr. Evarts called your attention to the question which it is alleged was put to you before the Committee: "You say, Mr. Tilton, that for a year after what you stated as Mrs. Tilton's confession, she insisted to you that she had not violated her marriage vow." I ask you what took place before the Committee, at the time, with reference to any alleged confession, which led to that question?

Mr. Evarts—I object.

Mr. Fullerton—That we understand by this time.

Judge Neilson—He may answer that.

Mr. Evarts—I except to its admission.

The Witness—If I understand the question, it is, What accusation or charge had been made to the Committee which led to their asking me that question.

Mr. Fullerton—Yes.

The Witness—Is that your question?

Mr. Fullerton—Yes. What took place before the Committee which led to the asking of that question on that occasion?

The Witness—I had laid before the Committee a sworn statement, in which I had charged Rev. Henry Ward Beecher with relations of sexual intimacy with Mrs. Elizabeth R. Tilton, from the Fall of 1868 to the Spring of 1870.

#### MR. TILTON'S SWORN STATEMENT OFFERED IN EVIDENCE.

Q. Can you turn to it there? [Showing a paper.]

A. It was in the form of a sworn statement, and I have it in my hand here. These are the exact words in which the narrative was given.

Q. And this paper which you now furnish is what had been laid before the Committee prior to the examination of you? A. Yes, Sir.

Mr. Fullerton—Now, I propose to read this.

Mr. Evarts—That we object to. Now, if your Honor please, you see the point to which this comes. They propose to prove the entire inquiry before the Committee, based on a single question which I put to the witness.

Judge Neilson—I think, Mr. Fullerton, you have gone far enough. I don't think this is proper.

Mr. Beach—It will make it clearer if this is read.

Judge Neilson—It may; but I don't think it is proper.

Mr. Fullerton—Your Honor sees that some member of the

Committee, in their presence, referred to the confession which had been stated to have been made by Mrs. Tilton and embodied a question based upon that fact. Now, is it not proper for us to know what was before the Committee at that time with reference to that confession?

Judge Neilson—He has stated that.

Mr. Beach—But so long as it was a sworn statement, ought it not to be given before the jury, in order that they may see what it was, and how made, and in what terms. It seems to me entirely proper; because the examination of the witness before the Committee had reference to that allegation; it was an indictment, it contained a charge against Mr. Beecher. He was questioned and interrogated with reference to that charge. Now, I think the jury ought to see exactly the length, and breadth, and height, and depth of the charge as it was there put in writing, sworn to before the Committee.

Judge Neilson—Well, the question now is as to the reading of a portion of that statement.

Mr. Evarts—Now he proposes to put in evidence the whole statement. Now, it is just as if the witness on the stand at a trial has given evidence in a case on a particular point, and is examined as to whether he did or did not in answer to a question, make a certain answer, and he admits that he did, and then that being in a case in which there was a sworn bill in equity put in by him, you get up and ask to put in his bill in equity. That is precisely the situation. Everybody knows that Mr. Tilton had made an accusation against his wife, and that this Committee was considering it, and because I have asked him as to a question and answer that he made, now they say, "We can read his sworn accusation against his wife and against Mr. Beecher."

Judge Neilson—That is the question, whether when you interrogate a witness as to a question and answer contained in an examination which has been reduced to writing, the other side can in virtue of that put in that examination. That is the point.

Mr. Evarts—This is a sworn accusation. This is not a part of an examination. What have we to do with that?

Mr. Beach—It is a part referred to by the question.

Mr. Evarts—I don't see that it is.

Mr. Beach—Well, we propose to show it.

Mr. Fullerton—They need not have anything to do with it if they had kept their hands off of it.

Mr. Evarts—We have not had anything to do with it, nothing whatever.

Mr. Fullerton—Yes you did.

Mr. Evarts—We have pursued the right of our inquiry, to wit, a contradictory statement on a particular point, under the rules of law; and the decisions are well defined. This is no new inquiry, and it is not a subject of new consideration. Our Court of Appeals has passed upon it in strict limitation within the last few years. Now, this is precisely the point, that when a contradictory statement, at variance with the views that the witness now presents, is answered by him admitting it, then they seek to show that he has made other statements that were confirmatory of his

present views, and not contradictory; and you cannot make anything more out of it than that.

Judge Neilson—We have allowed that as far as the occasion—the very occasion, as a part of the evidence.

Mr. Evarts—Now, the law has said, as I understand—and I have asked your Honor's attention to the authorities—that the occasion is the qualifying limitation, if anything occurred in the very conversation concerning the question and answer; and they seek to bring here this witness's bill of accusation or indictment against his wife.

Judge Neilson—Oh, no, not against his wife.

Mr. Evarts—That is the whole point of it.

Judge Neilson—That is not material, but it is not against his wife.

Mr. Evarts—It is in this connection.

Judge Neilson—That is mere talk.

Mr. Evarts—Your Honor, I am right, I think, in that proposition.

Judge Neilson—No. It is not a moral argument here, and it was not a moral argument there, as I understand it, to show that there was an accusation against his wife. I do not regard it so at all, but that is not material.

Mr. Evarts—We will look at the point. The point is that when I have undertaken to prove that he had made statements exculpatory of his wife, they seek to meet them by proving sworn statements to the contrary in respect of his wife.

Judge Neilson—The wife was not on trial there, and she is not on trial here.

Mr. Evarts—Well, that is as it may be, in some views and connections. I say that the only pertinency on which they introduce it here is to break the force of his statements that his wife had insisted she had not violated her marriage vow, by proving a sworn statement or accusation on his part that she had.

Judge Neilson—I understand you, I think. [To defendant's counsel.] Gentlemen, let me hear you further on the subject.

ARGUMENT OF MR. BEACH.

Mr. Beach—If your Honor please, I think the point under discussion has two aspects, which arise from the character of the question and answer which was called out on the part of the defense. Your Honor has said that the examination of Mr. Tilton before that Committee, upon the subject matter which was pending before that Committee, however long it may have continued, is to be regarded as a unit.

Judge Neilson—Well, is that correct?

Mr. Beach—Undoubtedly correct, Sir. If the witness is under examination before your Honor here, as has been the case for eight days, and, upon an occasion hereafter, his testimony in an action in which he is interested is in part given in evidence against him, the rule of law applies that whatever he may have said upon the same subject during the whole of the examination is admissible. It must be so, Sir.

Judge Neilson—That was my impression.

Mr. Beach—That is law, and it is justice.

Judge Neilson—That was my impression, but it was suggested that the Court of Appeals thought otherwise.

Mr. Beach—The Court of Appeals, Sir, have simply decided

this, and nothing more, that where a part of the declaration of a party, whether it is an unsanctioned or a sworn declaration, is given in evidence against him, all the part of that declaration which is kindred to the subject, to the part which is given against him, is admissible, and it is not a new rule of law, Sir; it is a mere affirmation of the ancient doctrine of the law of evidence. Now, they give in evidence a portion of the testimony of Mr. Tilton before this Investigating Committee. What is our position, Sir? Not that we may give the whole complaint, the whole indictment, or the whole evidence which may relate to matters not essentially and intimately connected with the particular part given by the defense, not necessary to qualify or explain every subject matter which they have given in evidence, but simply that part of the proceeding before the Committee on the part of Mr. Tilton which reflects light upon the portion which they have proven. Our object is, Sir, to get the whole truth, to get all that Mr. Tilton said upon the particular point as to which they have extracted a single question and answer of that examination. And who will dispute the propriety of that, Sir? Who will attribute to the law any principle which shall prevent Mr. Tilton from giving all that he said before that Committee upon the subject on which they have introduced but a part of his declarations? That examination, Sir, was conducted by query and answer. The examining counsel had a perfect right to change the subject at any time and at any point in the examination. Very often the same subject matter is inquired of again and again, as your Honor has occasion to know by experience upon this trial. Now, is it to be said that a single question and answer upon any given subject shall be selected by an adversary and the witness concluded, when, in the same examination and under the sanction of the same oath, before the same Court, he has qualified that answer, or explained it; and is that the principle upon which the law of evidence is founded, to exclude truth instead of reaching the whole of it? If you receive a portion of Mr. Tilton's evidence before that Examining Committee, you may convict him of inconsistency. If you receive the whole, the explanation which he gives of this question and answer, the kindred portions of his examination, intimating what he intended to express by the answer which has been given in evidence, you place him in an entirely false position, and do gross injustice to the administration of the law, I say, with great respect, Sir. Now, allow me to refer to this question: "Did you, upon being asked this question: 'You say, Mr. Tilton, for a year after what you stated was Mrs. Tilton's confession?'" This refers, Sir, to the statement previously made by Mr. Tilton. It was upon that statement that this query was addressed to him by the Committee. Does not the question refer to and adopt that statement, Sir? "You say a certain thing, and upon that statement which you have made, I ask you this question." I submit, Sir, that the statement which had been previously made, inducing the particular question which was here put and given in evidence, is by adoption and reference part of the question itself, becomes a part of the interrogatory, and for the purpose



of understanding what that statement was, what is the foundation of this interrogatory, we ask the witness what was the statement which is referred to in this question. Does your Honor see any impropriety in it, any possibility of wrong? If, in connection with that statement, Mr. Tilton had made qualifying expressions or statements, do they not become a part of this question, and necessary to a perfect understanding of the question? But, Sir, they get this answer—and this question and answer, and the significance of this discussion, has a far broader import than has been given to it—they get an answer from Mr. Tilton, that for a year after a given period his wife had persistently said to him that she had not violated her marriage vow. “Did you say that, Mr. Tilton?” A. Yes, Sir, I said that. We ask Mr. Tilton, “What else did you say upon that subject of the adultery of your wife? What else did you say explanatory of this answer? What else did she say to you upon that subject which you have testified to in this examination.” Is not the subject kindred, Sir? If Mr. Tilton, in answer to a question immediately preceding this interrogatory, had said: “My wife conceded to me that she had had sexual intercourse with Mr. Beecher, but in consequence of certain relations which she bore to him, pious or religious or what not, in consequence of the deep reverence which I entertain for him, in consequence of my conviction that my intercourse with him was a rest to him, healthful to him, inspired and animated him in the pursuit of his holy profession; under the seductions and impressions that a yielding to him would be an aid to the cause of Christianity and religion, I submitted myself without an impression of wrong or sin to his solicitations,” would not that be evidence, Sir, evidence explanatory of this answer that “my wife during that year insisted that she had committed no sin?” Cannot the answers of the witness given in the same examination, explanatory of the sense not only in which he gave that answer, but explanatory of the meaning under which Mrs. Tilton insisted that she had been guilty or no wrong, be permissible in a Court of Justice? Now, the rule is, Sir, as everybody concedes, that where a portion of a declaration is given in evidence all the remaining part, tending to qualify or explain that portion which is given in evidence, is admissible. The question here is the assertion of Mr. Tilton that his wife insisted she had been guilty of no corruption: Mr. Tilton, in another portion of his examination, explains the circumstances, the theory, the impressions, the doctrines upon which that assertion was made by him, and the principle or the theory upon which Mrs. Tilton made this assertion in regard to her own moral purity. Now, under the rule strictly, Sir, announced in the Court of Appeals, I submit to your Honor that the whole of Mr. Tilton’s testimony upon that subject is admissible; and you will see, Sir, that it is necessary for the ascertainment of the truth. The charge to be made against Mr. Tilton is, in the argument to this jury: “You have said that your wife for a year insisted upon her purity. Under what circumstances did you make this assertion? Why did you concede your wife to be a pure woman? What was the influence under which she was acting

which led you to that conclusion; and why do you exonerate her from the horror and shame which womanhood naturally and instinctively would consider the deepest crime against her nature?” May not Mr. Tilton explain it, Sir? Is he to be carried falsely to this jury with the assertion that he considered his wife pure who had sold her body to the adulterer, and no explanation, no qualification given of the act? Why, my friend says: “That is the purpose of our evidence; it is our design to argue that question to this Court and jury; that notwithstanding Mr. Tilton accused his wife of this adultery he nevertheless held her as pure and unstained.” And can he not say why? “What were the communications between you and your wife upon that subject, from which you derived that impression? Upon what principle of morals or of virtue is it that you made the declaration that your wife was sinless and pure?” It seems to me your Honor, that upon a technical view of this question, and upon a consideration of the principle which is involved in the objection made by my learned friend, the attitude in which they present Mr. Tilton, by this question and answer, we are entitled to this evidence. Now, Sir, in this statement, which was the statement referred to by this question, Mr. Tilton does state in writing some of the circumstances and impressions that led him to this answer. I will not read them, Sir, but I offer them, and they are contained in Articles III. and IV. of this statement, relating to the very subject of this question, and to a degree explaining the motives which led Mr. Tilton to give the answer, the answer adopting this statement to that extent as the foundation upon which it is addressed to the witness. It is essentially a part of the question by the very phraseology of the inquiry, and it is a part of the answer, the substance of the answer to the question, upon the same subject, expressing the same idea, not as my friend says, contradictory of the answer, by any means, or a statement of a foreign fact, which will conflict with the answer, but a deliberate, prepared, written statement, explaining to a certain degree the views which are contained in that answer. I submit to your Honor it is admissible.

Mr. Evarts—I propose now to close the argument, if my learned friends have said all they wished to say.

Mr. Beach—Well, I hope that will be a practice that will continue during the trial, that the objector shall close the argument. It has not heretofore.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—My learned friend who has last addressed your Honor, has wandered very far from the inquiry. It is not an inquiry at all what Mr. Tilton thought of his wife’s innocence or of his wife’s purity; what theory he had of an adultery that left an adulteress pure; not a word of that kind. The question had nothing even to do with any theory or scheme or reasoning of Mrs. Tilton, if she had any, by which an adulteress was nevertheless pure, from the holy character of an adulterer. The question is this, and a plain and simple one, and has to do with the direct test, not of those vaporous

and cloudy schemes of innocence and guilt, but whether as matter of fact, after an imputed confession on the part of this husband alleged, the wife had not insisted on—purity? No. On exculpation because of the circumstances of guilt? No. But on the simple straightforward question: “You say, Mrs. Tilton, for a year after what you stated as Mr. Tilton’s confession, she insisted to you that she had not violated her marriage vow.” Now that is a question of fact, whether a woman has violated her marriage vow. An intelligent woman knows whether she has violated her marriage vow. It is not metaphysical, it is not mystical, it is not in Heaven’s high Court of Chancery whether the temptations or the overshadowing influence shall excuse or pardon. It is the fact of the adultery of the body, as known and understood of all men and all women. And he answers that he did say so, that she did say so; that he did say that she did say she had not violated her marriage vow; and that is a contradiction of an assertion that she had violated it.

Judge Neilson—Where is that assertion—in the statement that they propose to read?

Mr. Evarts—That she had violated her marriage vow, that she had committed adultery. That is the very point of the inquiry, and now they seek, not as they profess, in obedience to the requirements of the rules of evidence, some statement then and there made, in the sense that the law considers it then and there made, in qualification of this husband’s assertion that his wife had insisted that she had not violated her marriage vow—they do not seek to say, to explain by that that he did not mean that she had not violated the marriage vow, for that has nothing to do with the question; but the question is, whether he made a qualifying statement reducing, impairing, affecting his recognition of his wife’s statement for a year, that she had not violated her marriage vow. And what do they propose in reduction of that? Why, his accusations; that is all. Does that qualify his statement that his wife insisted she had not violated her marriage vow?

Mr. Beach—Permit me to interrupt you, Mr. Evarts, by saying that this answer goes far beyond that simple question whether or not the wife had violated her marriage vow, as your Honor will see by reading or hearing read the question; “In answer, did you say ‘yes, Elizabeth was in a sort of vaporous, like cloud; she was between light and dark; she could not see that it was wrong; she maintained to her mother in my presence that she had done no wrong;’”—and going on with a much longer answer to the question, and all presenting the real question by this answer in the mind of Mrs. Tilton as to whether the accepted act of the violation of her person was a moral wrong, or adultery, in the sense in which the gentleman says all the world understands it.

Mr. Evarts—Now, that does not touch the point. He finds the qualifying circumstances in the answer itself.

Mr. Beach—Some of them.

Mr. Evarts—Let him find other qualifying circumstances.

Mr. Beach—That is just what I propose to do.

Mr. Evarts—Oh! but you do not. You do not propose to show that this witness, in answering that question, and in con-

nection with that question, of whether his wife had not insisted that she had not violated her marriage vow, had made qualifications of that in so insisting. Now that the husband charged his wife, that he charged her before the Committee, that he charged her in the publication—that is not a matter of dispute. We start on the basis that there is an accusation and an inquiry; and then one point of evidence comes out on that inquiry, and now the distinct proposition to your Honor is, that this witness’s—present witness’s bill of indictment, his *liber* of accusation, in the phrase of the civil law, is to be put in evidence as bearing upon the questions of whether or no he did not make that answer to that particular point of inquiry. Now, that is all. Now, the paper by itself can be no evidence at all. It is his own act of accusation. How can it be a form of secondary evidence concerning any principal fact that is alleged within it, especially when that principal fact, if it relate to any communication between husband and wife, of the nature your Honor rules, and under the requirements of the law, be made the subject of inquiry? Your Honor sees the hardship upon this wife and upon this defendant, if when the law professes to seal from inspection, in the pursuit of justice, confidential communications between husband and wife, there is this avenue open of secondary and irresponsible, not traversable and not searchable presentations of what so happened, by these second hand narratives. Now, in regard to what has been narrated to Mr. Beecher by this witness under the ruling of your Honor, that of course came in view, not as having occurred between him and his wife, but as being a narrative that he had conveyed to Mr. Beecher. Now, when testimony cannot be taken from this witness on the question of what did actually occur, they seek to put in evidence a form of accusation that he has presented before some tribunal; and I think your Honor will see that if it were a Divorce Court, an equity suit, a proceeding concerning divorce between these parties, that the introduction of the complainant would not be permitted, under cover of a refutation or qualification of an inconsistent answer that had been made by a witness. Now, I have before me the two cases from the Court of Appeals, one of *Downs vs. The N. Y. Central R. R. Co.*, in which the answer was excluded, the only pretense of introducing it being that it formed a part of a conversation that had been introduced on the other side; and the Courts say:

The question was objected to as leading, and that it was incompetent to prove the plaintiff’s declarations. The evidence was not inconsistent with the declarations proved by the defendant, but it tended to corroborate the testimony of the plaintiff by the fact that his statements had been consistent. This was not allowable. The conversation was not proved to have been a part of the same given in evidence by the defendant.

Judge Neilson—That would have been fatal proof, of course.

Mr. Evarts—[Reading]:

Had it been so the evidence would have been competent. The plaintiff could have proved the whole of a conversation, a part of which the defendant had given in evidence if it was connected, and all related to the same subject.



Judge Neilson—That is found in every text book we have on evidence for half a century.

Mr. Evarts—Nevertheless, Courts are used, your Honor, in order to apply them to particular circumstances.

Judge Neilson—Yes, Sir.

Mr. Evarts—And it is not, I take it, to be imputed to me as inconsiderate to ask attention to the last consideration of the subject by the higher Courts of the State.

Judge Neilson—Oh, no.

Mr. Evarts—In the case of *Rouse vs. Whited*:

The plaintiff showed that his property had been applied to the defendant's use in payment of a note made by the defendant and indorsed by the plaintiff. Proved that the defendant pointed out the property to the Sheriff and declared that it was the plaintiff's. Held, that the defendant was entitled to prove his statement in the same conversation, that the note was the plaintiff's debt and he was to pay it.

And it is put expressly upon the ground that the law rests upon the rule that when the plaintiff avails himself of a statement or admission of the defendant to charge him, the defendant may avail himself of any other statement made by him, at the same time tending to destroy or modify the use which the plaintiff might otherwise make of the admission or statement first called out by him, but it is only whatever is such qualification and modification arising as a part of that statement. Now, whenever a libel in a divorce suit, a bill in equity, can be put in as evidence *per se* in favor of the party who signs and makes it to qualify a statement that he has specifically made on an examination, whenever an authority to that extent can be produced, then, perhaps, the present proposition of my learned friend, which is to introduce the bill of accusation in qualification of a specific answer, may find some strength.

Mr. Beach—Let me correct that, Mr. Evarts. This is not a bill of indictment, Sir, or an equity bill. It was a sworn statement of facts, of evidence submitted to this Examining Committee upon their call upon this witness as a witness before them. It was a part of his evidence submitted to that Committee.

Judge Neilson—I still think that I cannot allow you to read that paper. It was a paper previously prepared. It is not a part of the conversation in respect to which they inquired, but an independent, deliberate act of the witness, a presentation upon which inquiry and examination was to be made, and afterwards, as has been proved, was made. I think you cannot read that paper.

Mr. Beach—Nor any portion of it, Sir?

Judge Neilson—Besides, I think this supposed discrepancy has been clearly explained. We have his theory.

Mr. Beach—That may be, Sir. We shall want to offer—

Judge Neilson—You have a right to offer specific points in order to point an exception, being reasonable in that respect, of course.

The Court here took a recess until 2 p. m.

ANOTHER EFFORT TO GET THE SWORN STATEMENT BEFORE THE JURY.

Mr. Fullerton—Your Honor having rejected the third and fourth paragraphs of the sworn statement of Mr. Tilton, with reference to the question I put to him, I make an offer of them.

Mr. Evarts—I submit to your Honor that you have ruled upon the question of the written paper, and it is not necessary that any part of it should be read to your Honor. Your ruling was made upon grounds quite irrespective of anything that is in it, and I must object to its being read.

Mr. Beach—Your Honor has passed upon that question twice, and it has been the habit of the counsel on both sides to do this.

Mr. Evarts—No; not where the Court passes upon it irrespective of anything that is in the paper. There is no possible ground for reading anything, when the question is passed upon on grounds irrespective of the contents; and it is not pertinent to the point of inquiry.

Mr. Beach—How shall we see that it is not pertinent, without making an offer of the paper?

Mr. Evarts—Whenever you make your bill of exceptions, then you can introduce it.

Mr. Fullerton—The bill of exceptions will be made by you, I apprehend. [Laughter.]

Mr. Evarts—I was only advising you when you will have an opportunity of introducing it, if you want to do so; when you make your bill of exceptions you can then use it.

Mr. Beach—This is no new question, Sir; it has been passed upon at different times.

Judge Neilson—The objection is that the ruling is not based on anything contained in the paper, but is independent of its contents, and therefore it is not necessary to read it.

Mr. Beach—Can we not make an offer of proof, Sir?

Mr. Evarts—You are under the direction of the Court.

Mr. Beach—Therefore I ask the Court if it prohibits us from making an offer of proof.

Judge Neilson—In the other instances where papers were excluded, certain clauses in the papers were referred to to point the exception.

Mr. Beach—I would like to know, if your Honor please, whether it is to be ruled that we cannot make an offer of proof.

Judge Neilson—I think you can.

Mr. Evarts—I object to counsel reading any part of this paper which your Honor has excluded.

Mr. Beach—I am not reading anything; I am going to make an offer of proof.

Mr. Evart—Let us see. Counsel must be held to their own proposition. The counsel has said that, your Honor having excluded the third and fourth paragraphs of the sworn statement, he now proposes to read them.

Judge Neilson—He now proposes to make a certain offer.

Mr. Beach—Your Honor will please to recollect that you permitted them, in regard to the "True Statement," to read the whole of it in sections and offers to prove it. You did the

same thing in regard to the Woodhull story. You have done it—

Judge Neilson—In regard to the Woodhull scandal?

Mr. Beach—Yes; and also in regard to the Biography of Mrs. Woodhull by Mr. Tilton.

Mr. Fullerton—And, although it was then ruled out, it was embraced in the form of offers by the learned counsel.

Mr. Evarts—I am prepared to discuss these propositions. In the first place, what might have seemed an evasion of the rule was introduced by my learned friends when they were going on with their case. When it was proposed to read from the Woodhull Life the Court ruled it out on the ground that the plaintiff could not be held responsible for opinions expressed in a biography any more than a historian. Therefore, upon my cross-examination I introduced no parts of it but those which purported to express the individual opinions of this witness of Mrs. Woodhull and her tenets; and I asked him the distinct proposition whether these were his sentiments; and in that light, and in that light alone, the passages were introduced. With reference to the Woodhull scandal, I had a right to prove, after it had been offered on the direct examination—they having said that the Woodhull scandal and the Woodhull story was made a subject of discussion between Moulton and Beecher and Tilton. I had what I thought was a clear right thereby to prove the Woodhull story; and your Honor limited me to that part of it that I could produce as being the subject of consideration before them, and I adhered to that. Now, Sir, the last case is that of my proving by this witness a destroyed paper. Having proved its destruction, and that no copy was preserved, I then read to him and asked him if that was not a part of the paper. It was direct proof; it was a mode of proof which was allowable by the law in respect to a destroyed paper. And that case has nothing to do with this.

Mr. Fullerton—How about the Clarke letter?

Mr. Evarts—That has been ruled out.

Mr. Fullerton—But you read part of it.

Mr. Evarts—I asked him whether that was submitted to him as a matter of treaty and negotiation by Mr. Clarke.

Mr. Beach—You asked him if he did not make certain statements which you read from the Clarke letter.

Mr. Evarts—I asked him a two-fold question, and I had a two-fold object. I asked whether he had seen the Clarke letter, and he said that he could not say if he had not, and he could not say if he had. I then asked him concerning the Clarke letter, and things that were, as matter of fact, in the Clarke letter, and only such—whether those propositions were made to him by Clarke, and were the subject of negotiation, as a matter of fact, as to the abandonment of *The Golden Age* or giving it up, or this, that, and the other. So that has nothing to do with this question. Now, here is a document, known and understood, which they claim a right to put in evidence, and which your Honor has excluded, and now they propose to read, as a part of their offer to your Honor, parts of that statement. It is like reading a deposition, or any other document which the Court has ruled out as *inter alios*, and not to be read. Now, there is no point to any exception to be

gained by the particular contents of this paper. The proposition has been made to your Honor, and you have disposed of the question, that it does not come within the rule of reduction or qualification of the particular statement concerning which the witness has been examined; that all the qualifying circumstances are perhaps contained in the paper itself. At all events, that this document, this accusation or indictment, whatever it is, is not admissible. Now, what rule of evidence is there that admits the reading of any part of that paper which your Honor says shall not be read. It is not because of anything in the paper—it is the paper itself that your Honor has ruled is not to be evidence.

Mr. Beach—I offer to prove, Sir, that upon the same examination, before this Committee, when he gave the answer to the question which has been given in evidence by the defendant, he also made this statement, and I propose to make the statement to your Honor, if you allow me to do so.

#### THE SWORN STATEMENT RULED OUT.

Judge Neilson—I propose to allow you, in order to fix and have the benefit of the exception, to make an offer, although that offer may (I don't know that it will) involve the reading of some part of the paper before you. The paper itself is ruled out; and if, in making your offer, you use the expressions of the paper it will be again ruled out, probably. But I allow you to make your offer in such terms as you propose.

Mr. Beach—Then I make the offer under the statement that we propose to prove that Mr. Tilton, upon the occasion which I have stated, made this statement orally to the Committee:

That about nine years ago the Rev. Henry Ward Beecher began, and thereafter continued, a friendship with Mrs. Elizabeth R. Tilton, for whose native delicacy and extreme religious sensibility he often expressed to her husband a high admiration; visiting her from time to time for years, until the year 1870, when, for reasons hereinafter stated, he ceased such visits; during which period, by many tokens and attentions, he won the affectionate love of Mrs. Tilton, whereby, after long moral resistance by her, and after repeated assaults by him upon her mind, with overmastering arguments, accomplished the possession of her person; maintaining with her thenceforward during the period hereinafter stated the relation called criminal intercourse; this relation being regarded by her during that period as not criminal or morally wrong—such had been the power of his arguments as a clergyman to satisfy her religious scruples against such violation of virtue and honor.

Mr. Evarts—Now, if your Honor please, I object to the evidence thus offered, as ruled out by your Honor already, and therefore, needing no argument upon its merits; and I object to any further reading from the paper, as a necessary means, or an appropriate, or admissible means of bringing to your Honor's notice the point of evidence concerning which you ruled.

Judge Neilson—This offer I overrule.

Mr. Beach—And we except.

#### THE VEXED QUESTION AGAIN DEBATED.

Mr. Evarts—If the paper needs to be identified by your Honor it may be so marked; but as for this right, when there is the exclusion of a paper, independent of its contents, to read it—



Mr. Beach [interrupting]—It seems to me, if your Honor please, that the counsel should not be permitted to reargue the question upon which your Honor has ruled.

Judge Neilson—It may be beneficial to me, perhaps.

Mr. Beach—Is he asking you to review the decision which you have made?

Judge Neilson—No; I do not so understand it.

Mr. Beach—Then there is no question before your Honor.

Mr. Evarts—I do not know that. This is, in a certain sense, within the discretionary control of your Honor, (perhaps not governed by any rule of law to that extent); but when the procedure of the learned counsel has indicated that it is the reading of a paper which has been excluded, I then submit that it is within the rule which excludes a paper, and its reading cannot be permitted.

Mr. Beach—In the first place, I deny that it is within your Honor's discretionary power to forbid my making an offer of proof; and, in the next place, when I make such an offer, I have a right to derive my information from any source, and it is not for the counsel or the Court to decide whether I shall hear it from my learned associates, or read it from a written offer prepared, or draw it from the evidence actually given before the body to which the question relates.

Mr. Evarts—There I think my learned friend is wrong. [Laughter.] The Court has a restraint over all such proceedings. The general proposition, no doubt, is this, that in restraint of counsel and their zeal in a cause, the better rule is to confine them to questions, without offers. Offers, however are admitted in the discretion of the Court, whenever it appears to the Court's observation that an offer is apparently necessary, or useful, to raising the point to be decided by the Court better than by a mere question. Now, when after the decision of the Court, that the paper shall not be offered in evidence, nor received in the cause, counsel thereupon undertake to read the paper as a renewed offer to prove, the Court sees that it is but a substitution, in a form that introduces the excluded matter, for the same ruling that has been given to exclude the matter.

Judge Neilson—Allow me to remind you, Mr. Evarts, that that is the precise position in regard to the Bessie Turner letters.

Mr. Beach—Your Honor means the Clarke letter.

Judge Neilson—No, the Bessie Turner letters. They were offered in evidence and excluded, and then, if my recollection serves me, they were read in this precise manner. Mr. Beach made the objection first, and then in your offer, Mr. Evarts, you stated the contents, and Mr. Beach withdrew his objection to the first letter, and then, in like manner, to the second.

Mr. Evarts—In that case, if your Honor please, after you had ruled out the letters, had I not the right to ask this witness whether these reasons were the reasons for Bessie Turner going away?

Judge Neilson—And in doing that you read the letters.

Mr. Evarts—It does not follow that I could not read a paper as the basis of a proper inquiry to the witness, because it had been ruled out as evidence. I never have contended for that doctrine.

Judge Neilson—The letter had been rejected?

Mr. Evarts—It had, as evidence *per se*; but it did not follow that I could not make it the basis of an inquiry to the witness. It might be made evidence by the witness's statements concerning it. But my proposition to your Honor is that this is nothing but the reproduction of a proposition of evidence in a form that produces the matter of a paper that has been excluded, which paper your Honor has excluded, whatever its matter was.

Mr. Beach—Your Honor has permitted me to present a part of my offer, and the counsel then interrupts me, in the course of my proposition, with the objection that there is some sort of professional impropriety in the course which I am taking, as it introduces the immediate subject matter, in the shape of an offer, proposition or question which had been excluded by the Court. Your Honor excluded the Victoria Woodhull biography; your Honor excluded the Victoria Woodhull statement of this scandal; your Honor excluded the Clarke letter; and yet, in each and every of these particulars, introducing the very subject matter which you did exclude, and for the purpose of getting it before the Court upon the record, the counsel read the very matter which had thus been excluded, and now he appears with the objection to my imitation of that example.

Judge Neilson—Am I right in my recollection about the two Bessie Turner letters.

Mr. Beach—Yes, Sir.

Judge Neilson—I ruled them out.

Mr. Beach—Yes, Sir.

Judge Neilson—On your objection Mr. Beach?

Mr. Beach—Yes, Sir.

Judge Neilson—Then the point is, that in the form of an offer they stated the contents, and you withdrew your objection to the first letter, and in like manner to the second.

Mr. Beach—Yes, Sir.

Judge Neilson—Now you have a right to make your offer to the Court.

Mr. Evarts—I have, I believe, the right to close the objection.

Mr. Beach—I do not know whether it follows that the gentleman has the right to close the objection when I make an offer.

Mr. Evarts—I object to your offer, and I have the affirmative of the proposition.

Mr. Beach—No, Sir; I have the affirmative of the proposition, in making the offer.

Judge Neilson—I think so. But still I would like to hear Mr. Evarts.

Mr. Beach—If your Honor thinks me right, I hope you will give me the benefit of being right occasionally.

Judge Neilson—Hereafter, yes, Sir. [Laughter.]

Mr. Evarts—Now, if your Honor please, here is a paper written and signed by the witness, it is said, which has been offered in evidence. The Bessie Turner letters were letters written by a third person, and as so written, equally with the Clarke letter until they were brought into some connection with the witness, with the party, the plaintiff—they could not be given in evidence. I thought they could be

read under the degree of evidence that had affected them. Your Honor thought not, and they were excluded therefor, being the acts of third persons and so *inter alias* until such evidence was given connecting the party with them. Now, I, having information that the Bessie Turner letters conveyed to me, and that the Clarke letter conveyed to me underlook to extract from the witness his testimony that the statements therein contained had been brought to his notice and to inquire concerning them, and there was my examination, and only there, I submit to your Honor. Now, this point that I have submitted to your Honor, that the Court will exclude a reproduction in an oral form of a document that is excluded, when all that is served is to get a ruling of the Court upon an oral presentation in place of that already given upon a written one, is carried so far in some of the Courts of the neighboring States that they will not permit it to be made a subject of oral examination in Court when a basis is proposed to be raised—desired to be raised—for introducing the instrument. Now, in our Courts we have not gone so far as that on the ground, as I am advised, that that rule of the sister States' Courts, which requires a basis to be made by affidavit to be laid before the Judge, would be, if enforced with us, contrary to our notions of the right of cross-examination, concerning any matter that came to be the subject of evidence. But of the general proposition that offers are not to take the place of excluded testimony, and that when the Court has before it definitely the proposition that the document excluded is so excluded irrespective of anything that is in it, and that the renewed form of offer is nothing but an oral production of the document, I apprehend there is no diversity and no lack of distinctness in the rulings of our Courts upon that subject.

#### THE FINAL DECISION ON THE SWORN STATEMENT.

Judge Neilson—I do not rule that the counsel shall be allowed to make an offer for the sake of reproducing part of the document ruled out. I simply allow him to make such offer as being professional, if he feels called upon to make it with a view of an exception which he may wish to take, supposing that to be material to his rights.

Mr. Beach—Will your Honor please remark, in making that ruling, that our previous offer was to read from the statement?

Judge Neilson—I will note it.

Mr. Beach—I have proposed now to prove that this witness orally made the statement which I am about to submit in my proposition, to the same tribunal, when he answered the question which has been given in evidence by the counsel on the other side and in regard to the same subject matter that he so stated before the Committee.

Mr. Evarts—Well, do you mean that he read his statement to the Committee?

Mr. Beach—I mean just what I say.

Mr. Evarts—Well, I think I am entitled to an understanding of it.

Mr. Beach—Well, that depends upon whether I consider your understanding pertinent to my purposes. [Laughter.]

Mr. Evarts—I think it is.

Mr. Beach—Well, I do not.

Mr. Evarts—The purpose for which we are here.

Judge Neilson—Well, I have been waiting for some time for your offer.

Mr. Evarts—I except to your Honor's ruling that the offer may be repeated in the form that is now allowed.

Mr. Beach—And under the same conditions as the offer just rejected, Sir, I offer to prove that upon the occasion referred to Mr. Tilton stated to the Committee that on the evening of October 10th, 1868, or thereabouts Mrs. Elizabeth R. Tilton held an interview with the Rev. Henry Ward Beecher at his residence, she being then in a tender state of mind owing to the recent death and burial of a young child, and during this interview the act of criminal commerce took place between the pastor and this parishioner. the motive on her part being, as before stated, not regarded by her at the time as criminal or wrong, which act was followed by a similar act of criminality between these same parties at Mr. Tilton's residence, during a pastoral visit paid by Mr. Beecher to her on the subsequent Saturday evening, followed also by other similar acts on various occasions from the Autumn of 1868 to the Spring of 1870, the places being the two residences aforesaid, and occasionally other places to which her pastor would invite and accompany her, or at which he would meet her by previous appointment, these acts of wrong being on her part from first to last not wanton or consciously wicked, but arising through a blinding of her moral perceptions occasioned by the powerful influence exerted on her mind at that time to this end by the Rev. Henry Ward Beecher, as her trusted preceptor and guide.

Judge Neilson—That is ruled out; the offer is denied.

Mr. Beach—And we except, Sir.

#### MR. TILTON'S EXAMINATION TEMPORARILY SUSPENDED.

Mr. Fullerton—If your Honor please, at the close of yesterday's proceedings we supposed that the re-direct examination and the re-cross of Mr. Tilton would occupy but a small part of to-day, consequently we provided ourselves with a witness from the City of New-York who is now present waiting to be examined. She is in very bad health; has been for a long time under medical treatment, and is still under medical treatment, and it is absolutely necessary, I think, for her health, that she should return to the city to-day. I therefore ask your Honor's permission to suspend the further examination of this witness, to examine the witness to whom I refer.

Judge Neilson—What do your opponents say to that? I have no objection to it.

Mr. Fullerton—It is very short and will not occupy more than a few minutes.

Judge Neilson—Is that agreeable, Sir. Is that arrangement satisfactory, Sir?

Mr. Evarts—We ought to be entirely certain, if your Honor



please, that the witness will be able to attend if the cross-examination should be prolonged.

Mr. Fullerton—Oh, yes, Sir.

Mr. Beach—Yes, Sir; certainly; that is our hazard by law.

Mr. Evarts—Well, you say that she could not be able to come to-morrow.

Mr. Fullerton—I say that she is under medical treatment and desires to return to the City of New-York to-night, and must do so, and I have no doubt but what her direct and cross-examination will be completed before the hour of adjournment.

Judge Neilson—Then the anxiety is about the cross; whether she could attend to-morrow.

Mr. Fullerton—Well, Sir, she will have to attend to-morrow if they do not get through, however inconvenient it may be; but I apprehend the necessity for her return will not exist at the close of the day.

Mr. Beach—Why, it is very well understood, Sir, that we lose the benefit of her examination if we do not produce her.

Mr. Evarts—Oh! I know—your examination—I know his Honor don't think so entirely about those results.

Judge Neilson—I assent to this cheerfully if the counsel will agree to it. You may leave the stand, Mr. Tilton.

Mr. Fullerton—It is all within the province of the Court, Sir.

Judge Neilson—I don't understand there is any objection, if you agree to produce the witness for cross-examination.

Mr. Fullerton—Of course we must, Sir, or lose her testimony.

Mr. Evarts—It is within your Honor's control, no doubt.

The witness referred to here stepped to the stand and the oath was administered by the clerk. When he had recited the formula she repeated after him: "I solemnly swear the truth I will tell and nothing else."

Judge Neilson—Kiss the book.

The Officer—What is your name?

The Witness—Kate Carey, Kate Smith and Carey—I went by Mrs. Smith.

#### TESTIMONY OF MRS. KATE CAREY.

Mr. Fullerton—Where do you reside? A. I am from the hospital, Sir—Bellevue; I have come now—

Q. From Bellevue Hospital? A. Bellevue Hospital.

Q. In New-York? A. Yes, Sir; I have been there eleven weeks sick—severe cold.

Q. Severe cold? A. Yes, Sir.

Q. Do you recollect the time that you went there; the day of the month? A. The day I went; no, Sir, I don't.

Q. In what ward were you? A. Twenty-first, Sir.

Q. Under whose immediate care? A. Dr. Shafer and Dr. Luck.

Q. Where did you reside before you went there? A. In Irving-place.

Q. In the City of New-York? A. Yes, Sir.

Q. With whom? A. Well, the name really I can't pronounce, but they were English Jews; it was near Seventeenth-st—55.

Q. How long did you live there? A. One month; I was sick there.

Q. You were sick there? A. Yes, sir.

#### MRS. CAREY A SERVANT IN THE TILTON FAMILY.

Q. Did you ever reside with the family of Theodore Tilton? A. Yes, Sir.

Q. When? A. I was the first wet nurse that wet nursed the baby.

Q. Which baby was that? A. Ralph.

Q. The baby Ralph? A. I believe that is the name.

Q. Do you recollect the year that you went there? A. I do not, Sir.

Q. How many years ago was it? A. It is, I believe, six years, Sir.

Q. And what season of the year was it when you went? A. In the Summer, Sir; June.

Q. How long did you remain with Mrs. Tilton? A. Four months, Sir.

Q. As wet nurse? A. As wet nurse.

Q. And during that time, did Mrs. Tilton go away from home anywhere? A. To Monticello, Sir.

Q. How long did she remain there? A. Very short, Sir; I think it was three weeks or a month; I am not sure, Sir.

Q. In the Summer season? A. Yes, Sir.

Q. Did you go with her? A. Yes, Sir.

Q. And did you remain there as long as she did? A. Yes, Sir.

Q. And then did you return with Mrs. Tilton to Brooklyn? A. Yes, Sir.

Q. And how long did you remain with her after you returned? A. I remained until the cold weather came—to make the fire.

#### A VISIT OF MR. BEECHER DESCRIBED.

Q. During the time that you lived with Mrs. Tilton, did you see Henry Ward Beecher? A. I did, Sir.

Q. Where did you see him? A. I saw him going into Mrs. Tilton's room several times before we went to the country, shutting the door after him, but I did not notice or hear any talk.

Q. What room was it he went in and shut the door after him? A. In her own bed-room.

Q. Where was that situated? A. Right over the hall as you come in; there are four rooms on one floor.

Q. It is a double house, is it? A. No, Sir; it is a small frame cottage house.

Q. And where were you when you saw him go into her bed-room? A. I was in the next room, Sir; there is folding doors between.

Q. And you saw him go in there? A. Yes, Sir.

Q. Do you say the door was locked? A. No, Sir; the doors was open. She got up and shut the folding doors to.

Q. Who shut the doors? A. Her own self, Sir.

Q. Where was your room with reference to theirs, do you say? A. My room at the present time, when I went there was next to Mrs. Tilton's; I had a lounge to sleep on.

Q. Now, was this, that you now speak of, before she went to Monticello or after her return? A. Before, Sir.

Q. Now, did you see anything else before they went—before the family went to Monticello? A. No, Sir, I did not.

Q. Now, did you see anything after their return from Monticello? A. I did, Sir.

Q. What did you see then? A. I see her in the back parlor sitting on Mr. Beecher's knee.

Q. Where were you then? A. I went into the dining-room for a glass of water.

Q. Where did you go from when you went into the dining-room? A. From my nursery, upstairs, after nursing the baby; put it to sleep.

Q. And in what part of the back parlor were they sitting? A. In the corner off the dining-room.

Q. In the corner of the parlor off the dining room? A. Yes, Sir.

Q. What time of the day was this? A. It was getting on for dusk—evening.

Q. And where were you when you saw them thus sitting? A. I was going towards the dining room table to get to the ice-pitcher to get a glass of water.

Q. Did you see them distinctly? A. I did, Sir.

Q. What kind of doors were there between you and them? A. Folding doors.

Q. Were they open? A. Yes, Sir; they was very little apart; that I could see.

Q. Well, did you see anything else after their return? A. I saw—I saw her arm—her hand on his shoulder; and he says: "How do you feel, Elizabeth?" "Dear father," she says, "I feel so so."

Q. "Dear father," she says? A. "I feel so so."

Q. Where was she when she made use of that language? A. Sitting on his lap.

Q. Sitting on his lap? A. Yes, Sir.

Q. And did you hear distinctly the words, "Dear father?" I did; I did, Sir.

Q. Did you see anything else? A. No, Sir; I did not; I went with my glass of water upstairs to my nursery; I said nothing to nobody.

Q. How long was this after the return from Monticello? A. Well, to my recollection, I think it was about three weeks.

Q. How often, if at all, beyond the time that you speak of did Mr. Beecher call at the house while you were there? A. Well, he called several times before—

Q. Well, give us some idea, if you can remember, of the times that he called? A. He called, I think, four or five times before she got out of her bed to go to Monticello; she was poorly.

Q. And after her return from Monticello how frequently did he call? A. I don't know, Sir, that now.

Q. How? A. I can't say. The notes and letters come up to the waiter girl to bring the message down, but she would always go down in the parlor and retain him.

Q. Did you ever carry any notes for Mrs. Tilton? A. No, Sir.

Q. What time did you leave her employ, as near as you can recollect? A. It was some part in the Fall.

Mr. Beach—In the Fall, she stated before, when he commenced making these calls.

Q. Have you anything by which you can determine the time when you left their employ? A. I can't recollect what time I left, but the difficulty I had by leaving her was through Bessie Turner, we had a few words.

Q. You don't recollect the season of the year? A. No, Sir; but the fires; it was cold weather; sometime in cold weather;

Q. The fires were being built in the house? A. Yes, Sir, and the furnace going.

Q. Do you recollect whether it was before or after election? A. That I can't say; I don't know, Sir, about that.

Mr. Fullerton—That is all.

# CROSS-EXAMINATION OF MRS. CAREY.

The witness was cross-examined by Mr. Evarts.

Mr. Evarts—Where did you go to live after you left Mr Tilton's? A. I went to—

Q. Where did you go to live when you left Mr. Tilton's? A. I went to live in Montague-st.

Q. Where? A. In Montague-st., right facing the drug store; Gilkison, I believe, is the gentleman's name.

Q. Gilkison? A. Yes, Sir.

Q. As— A. As a cook, washer and ironer, Sir.

Q. How long did you live there? A. I lived there one month. The milk went through my system; I put my milk away too quick—my breast milk; I had to give that up.

Q. Well, your health failed? A. Yes, Sir.

Q. And where did you go after that? A. I went over to New-York, Sir, and boarded until I got thoroughly well.

Q. Where did you board? A. I boarded in Thirteenth-st., 415.

Q. A boarding-house? A. No, Sir; neighbor woman.

Q. What was the name of the woman? A. Mrs. Dyer.

Q. How long did you stay there? A. I stayed there four weeks.

Q. Then where did you go? A. I came back to Brooklyn again, and I really don't know whether I went—I think I went to Mr. Hunter's in Pierrepont-st.

Q. What is the name? A. Mr. Hunter.

Q. And how long did you remain there? A. Four months, Sir.

Q. And in what service? A. Cook, washer and ironer, Sir.

Q. Well, you left there in four months. Where did you go next? A. Clinton-st., near Second-place.

Q. What? A. I went to Clinton-st., near Second-place, but I really cannot think of the name. It is near Second-place.

Q. You cannot remember your employer's name? A. No.

Q. Can you give us the number? A. Duray—that is the name; Duray.

Q. Duray? A. Yes, Sir.

Q. Do you know the number of the street? A. No; it is in Clinton-st., near Second-place.

Q. Yes, but the number? A. The number I don't know. It is about the second house from the corner.

Q. Very well, how long did you stay there. A. Two months.

Q. And in what service? A. Cook, washer and ironer, Sir.



Q. And you left there? A. Yes, Sir.

Q. Where did you go next? A. Oh! I went to Pacific-st.

Q. In what service and with whom? A. With Mr. Morse; keeps a grocery store, the corner of Smith-st.

Q. Well, what was your service there? A. Cook, wash and iron.

Q. How long did you stay there? A. Four months; until they broke up housekeeping.

Q. Where did you go next? A. I went to New-York.

Q. And in what employment, if any? A. No; nothing in New-York.

Q. No employment? A. No; only the place in Irving-place; I have not been well since.

Q. Well, where did you go to live in New-York after you left this grocer? A. I didn't go anywhere, Sir.

Q. Well, but you lived somewhere? A. I boarded in Fourteenth-st. a while.

Q. This place that you have— A. In Thirteenth-st. I boarded when I left Mrs. Tilton.

Q. Well, you went to Fourteenth-st.? A. Fourteenth-st., to board.

Q. Where was that? A. In Mrs. McCafferty's.

Q. What part of Fourteenth-st.? A. Between First-ave. and Avenue A.

Q. Do you remember the number? A. 327.

Q. And how long did you stay at Mrs. McCafferty's? A. Three weeks, Sir.

Q. Three weeks? A. Three weeks I stayed there.

Q. Where did you go next? A. I went to a place in Second-ave.

Q. What number? A. I don't know the number, Sir.

Q. Well, whose house? A. Brown—Mrs. Brown.

Q. Well, do you remember the number of the street? A. I don't; no, Sir; it is in Second-ave.

Q. Near what street? A. Between Twelfth and Thirteenth-sts.

Q. And were you at service there? A. Yes, Sir.

Q. In what way? A. Cook, wash, and iron.

Q. How long did you stay there? A. I stayed there four months; I believe it is four months.

Q. Yes. Where did you go next? A. That was the last place.

Q. Last service? A. Last service.

Q. Now, how long ago did you leave this Mrs. Brown? A. Mrs. Brown.

Q. Brown, wasn't it? A. Browning.

Q. Yes, Browning? A. Let me see, I think it is something like a year ago.

Q. What? A. I think it is over a year ago.

Q. Over a year ago? A. I think it is.

Q. And you haven't lived out since? Have you been in ill health ever since? A. Yes, Sir; bronchitis on the lungs.

Q. Well, I am very sorry for that. And how long have you been at Bellevue Hospital? A. I have been at Bellevue Hospital going on ten weeks, Sir.

Q. Who obtained you the place at Mr. Tilton's? A. Mr. Hanson, from the Nursery, Fifth-st., off the Bowery.

Q. He sent you over with a recommendation? A. Yes, Sir.

Q. And whom did you see? A. I saw Mrs. Tilton in bed, poorly, and her aunt came and took me over.

Q. And her what? A. Her aunt came for me to New-York and took me over.

Q. Well, was Mr. Tilton there? A. I didn't see him; he might have come over.

Q. At the birth of the child? A. Oh, yes, Sir; I saw Mr. Tilton in the evening.

Q. What? A. I saw Mr. Tilton in the evening.

Q. That is the evening of the day that you got there? A. Yes, Sir.

Q. Were you there before the child was born? A. No, Sir.

Q. But immediately after, or very soon after? A. About two weeks.

Q. About two weeks? A. About two weeks. The child was two weeks old when I went there. I was the first nurse.

Q. I thought you said you were the first person that saw— A. The first wet nurse, Sir.

Q. I thought you said "witness." I beg your pardon. I thought you were there at that time. Well, about a fortnight after the birth you were there, and what time of the year was that? A. Well, to my recollection, it was about in June, Sir; some part in June.

Q. Now, of whom did the family consist when you were there? A. There was four children and Mr. Tilton and Mrs. Tilton; that is all I seen.

Q. Any other servants? A. Five servants there was in the house.

Q. Five servants in the house? A. Yes, Sir.

Q. Including yourself? A. Yes, Sir.

Q. Four besides yourself? A. Four: six with Bessie Turner.

Q. Six with Bessie Turner? A. Yes, Sir.

Q. Now, Mr. Tilton was there at what times of day? A. Well, some days he would be home about four o'clock; some days late, and some days early.

Q. Did he stay there during the day any times that you were there? A. No, Sir; not as I know of.

Q. All day I mean? A. No, Sir.

Q. Had you known Mr. Beecher before? A. Never seen the gentleman in my life, Sir; I often heard tell of him.

Q. And when did you know that it was Mr. Beecher that made a call and how? A. The upstairs girl named Teresa Burke, told me.

Q. Told you it was Mr. Beecher? A. Told me it was Mr. Beecher.

Q. Now, as I understand it, when Mrs. Tilton was in what you call her bed room, you, with the child, were occupying the room that communicated by folding doors? A. Yes, Sir.

Q. And you there slept? A. Yes, Sir.

Q. Having the care of the child also? A. Yes, Sir.

Q. And did you pass back and forth? A. Yes, Sir.

Q. Through the folding doors? A. No, Sir.

Q. Well, I don't mean when they were shut, you know? A. Well, when they were open I didn't, Sir; very seldom went into her room.

Q. Very seldom went into her room? A. Very seldom went into Mrs. Tilton's room.

Q. Well, were not the doors usually open? A. Yes, Sir; they were open every day to air the room; windows, too.

Q. Well, were not they generally kept open? A. No, Sir; they were shut a great many times in the evening; they would be shut when she would be in her room.

Q. But through the day, and as a usual arrangement, were not those folding doors between those two rooms open? A. Through the day; yes, Sir.

Q. Yes? A. Only this time, when Mr. Beecher sent word up that he was down stairs, and would like to see her.

Q. Well, now, I am not asking about that; they were usually open? A. They were usually opened every day.

Q. Very well, now. Sometimes you say they were closed? A. Yes, Sir.

Q. Was there always some reason for closing them? A. That I do not know, Sir.

Q. Well, I mean how did it occur. Was there a habit of shutting them at any particular hour of the day, or were they closed if there was somebody there, or this or that reason? A. Well, when she would be dressing she would close them.

Q. Close them? A. Yes, Sir.

Q. But there was no habit of closing them at any particular hour of the day? A. No, Sir.

Q. Or evening? A. No, Sir.

Q. So that when they were open, as they were usually through the day, they would remain open in the evening until something occurred as a reason for closing them? A. When she would go to bed she would close them.

Q. Yes; close them when she went to bed? A. Yes, Sir.

Q. Very well, when you occupied the other room with the child through the night, when you were composed for the night, the doors were usually closed? A. No, Sir, open.

Q. They were open? A. Open while I was in that room, and they changed me to the other room, next to Mr. Tilton's room.

Q. Yes. Then, as I understand it, while you occupied this communicating room, where the folding doors were between, were the doors always open? A. In day time, Sir.

Q. Yes; in day time? A. Yes, Sir.

Q. But at night, when you were both arranged for the night, both Mrs. Tilton and you, were the doors thus open? A. The doors were shut, Sir.

Mr. Evarts—Well, that is what I understand you; they were shut.

Q. Now, at what stage of your service there did you leave this communicating room—this folding-door room, and were lodged in some other room? A. They had not a room—a bed in the first room I went to, and the baby and me could not get along on the lounge, and when they had the room next to Mr. Tilton vacant they gave me that room?

Q. When that was vacant? Yes, Sir.

Q. Who vacated that room to accommodate you? A. I don't know, Sir.

Q. You don't know who had occupied it before? A. No, Sir.

Q. How long after you went there was that change made? A. About three weeks.

MR. BEECHER'S CALLS AGAIN DESCRIBED.

Q. Now, how long after you went into service there did you first see Mr. Beecher at the house? A. Two weeks, Sir.

Q. Two weeks? A. Yes, Sir.

Q. And was that the time when he went into her bedroom? A. Yes, Sir.

Q. And you were in the folding-door room? A. Yes, Sir.

Q. And saw him go in, didn't you? A. Yes, Sir.

Q. Who showed him up? A. The upstairs girl went to the door.

Q. Who was she? A. Teresa Burke.

Q. She showed him up? A. She showed him up.

Q. And showed him into this room, didn't she? A. I didn't see Teresa coming upstairs with him. He knew where the room was.

Q. Well, I am only asking you what you know, and nothing else. A. Yes, Sir.

Q. How do you know that Teresa had anything to do with it, if you didn't see her? A. I didn't see her on the stairs coming up, only she told me she opened the door. She was the waiter girl.

Q. Afterward she told you? A. Yes, Sir.

Q. Then she either showed him up or sent him up, I suppose, or let him up? A. She came up with a message to know if Mrs. Tilton was ready to receive Mr. Beecher.

Q. She came up and asked that question first? A. Yes, Sir.

Q. And you heard that? A. Yes, Sir.

Q. And then she went down. What was Mrs. Tilton's answer to that to her? A. She said in a few minutes when she could get herself fixed.

Q. And then Teresa Burke went off with that message, I suppose? A. Yes, Sir.

Q. And in a few minutes Mr. Beecher came up? A. Yes, Sir.

Q. Did he come first into the room in which you were? A. No, Sir.

Q. Now, who closed the folding doors? A. Mrs. Tilton.

Q. She was then sitting up, was she? A. She was able to get up and put the blanket around her.

Q. She was sitting up? A. No, Sir; she was in bed—poorly.

Q. When? A. When the message came up to her.

Q. I understand that, or at least I don't know how that was but she closed the folding-doors? A. Yes, Sir.

Q. Now, did you ever see Mr. Beecher there again, except while you were occupying this folding-door room? A. No, Sir.

Q. Can you fix the time of this visit that you have described as the first time you saw him in reference to the length of time it was after you went into the service—how long after you first went there was this visit of Mr. Beecher's? A. Two weeks.

Q. Two weeks? A. Two weeks.

Q. About four weeks, then, after the confinement of Mrs. Tilton? A. She was up; she was going on three weeks confined.



Q. When you went there? A. She was two weeks confined when I went there.

Q. And two weeks afterward you saw him go there? A. Two weeks afterwards I saw him go in there.

Q. About four weeks after her confinement? A. Yes, Sir.

Q. Now, when did they go to Monticello; that is, when did the family go to Monticello? A. It was after July.

Q. After July? A. Yes, sir; some time after July.

Q. And who went—who were they that went? A. Mrs. Tilton, me and the baby, and the oldest daughter, Miss Florry, and Caddy and Alice.

Q. The children? A. Yes, Sir, the children.

Q. And any other servant? A. No, sir.

Q. And did Mr. Tilton go? A. No, sir.

Q. How long were you at Monticello? A. Not more than three weeks, sir—three or four weeks.

Q. In a boarding house? A. No, Sir; in Dr. McCabe's, a private family.

Q. Was Mr. Tilton there during that time? A. No, Sir.

Q. You didn't see him there at all? A. No, Sir.

Q. Now, after your return, about how long were you living at Mrs. Tilton's before you finally left? How many weeks after your return from Monticello did you continue in that service? A. Well, I can say it was the Fall; the fires were lit; I cannot say what time it was.

Q. Was it more than four weeks or so? A. I was four months in their employment.

Q. From the time you went there? A. Four months altogether; I received \$100.

Q. Four months' wages you received? A. Yes, Sir.

Q. So that, from the end of June, that would be July, August, September and October? A. Something about that.

Q. Something like that. Did you leave before your month was up, or exactly when it was up, or how? A. Well, I could not say, Sir.

Q. Now, you say that you saw Mrs. Tilton and Mr. Beecher together in a room down stairs afterwards? A. Yes, Sir.

Q. Was that after their return from Monticello? A. Yes, Sir.

Q. And how long after the return from Monticello, or how long before you left the service? A. It was about three weeks after we came from Monticello—three or four weeks.

Q. Where were you when Mr. Beecher came into the house, or didn't you know of his coming into the house? A. I was up stairs in the nursery when Teresa Burke brought the news up to Mrs. Tilton that Mr. Beecher would like to see her. I heard the words.

Q. And that he was in the parlor? A. That he was in the parlor waiting for her.

Q. Did Mrs. Beecher go down? A. Mrs. Tilton went down.

Q. I beg your pardon; Mrs. Tilton went down? A. Yes, Sir.

Q. And then you had occasion to go down? A. I wanted to go down before that, but I could not.

Q. What was the occasion for your going down that you had? A. I wanted a drink of ice-water.

Q. And you had been delayed? A. Yes, Sir,

Q. By your duties with the child, or something? A. I was nursing the baby at the time.

Q. Now, you went down. How are these rooms arranged down stairs? Are they communicating by folding doors? A. Yes, Sir; the dining-room has folding doors; it goes to the back parlor.

Q. Is the house three rooms deep, or only two? A. There are two back parlors, and a dining-room, and a small room on the side going in.

Q. There is a front room, I suppose, along the hall? A. Yes, Sir; a little small room like a receiving room.

Q. A reception room? A. Yes, Sir.

Q. And then there is a parlor? A. Yes, Sir.

Q. Into which you go, I suppose? A. Yes, Sir.

Q. From the hall at the end? A. Yes, Sir.

Q. Then is the dining room another room? A. Yes, Sir; it goes from the back parlor, and the folding doors go into the parlors to cut off the back parlor from the dining room.

Q. Then I imagine, from your description, that the back parlor and the dining room together go the whole width of the house? A. Yes, Sir.

Q. That is so, is it? A. Yes, Sir.

Q. And the hall, therefore, does not run through the house? A. The hall is a very small hall.

Q. And does not run through the house? A. And does not run through the house; no, Sir.

Q. Now, which is the largest room, the dining room or the back parlor? A. The back parlor.

Q. And are the folding-doors usually open? A. Yes, Sir.

Q. Between those two rooms? A. Yes, Sir.

Q. Did you go to take your drink of water to the sideboard? A. Yes, Sir.

Q. Then the sideboard was in —? A. The ice-pitcher was on the dining-room table by the window.

Q. And there is where you went? A. Yes, Sir.

Q. And got your drink of water? A. Yes, Sir.

Q. This time you think was about three weeks after you came back from Monticello? A. From Monticello; I think it is about that.

Q. That would be about the month of August, would it not? A. I don't know, Sir; it was about three weeks.

Q. Or the end of August, or some such time. You cannot fix the time? A. No, Sir, I cannot.

Q. How soon after your return from Monticello have you stated this was? A. We didn't stay more than three or four weeks in Monticello.

Q. After you got back, how soon was this visit of Mr. Beecher in which you said you saw him? A. About three weeks, Sir.

Q. About three weeks? A. Yes, Sir.

Q. And that was the first time you had seen him after the return? A. Yes, Sir.

Q. From Monticello, was it? A. Yes, Sir.

Q. Now, you were familiar, I suppose, with these parlors and the furniture in them, were you not? A. Yes, Sir; I was often in the parlors.

Q. What chair— A. It was a large arm chair, with a soft bottom.

Q. And where was it seated? A. In the corner.

Q. Where was it placed? A. In the corner.

Q. In the room? A. Facing the windows—by the window.

Q. Which corner? A. *This* corner (indicating), and there was a window just as you turn in from the dining-room.

Q. Was it a chair that was usually there? A. That I don't know.

Q. Now, how many windows are there in the back parlor? A. Two windows.

Q. And one in the dining-room? A. Yes, Sir.

Q. Which of these windows was this chair near? A. It was nearer to the dining-room window. It was not near the window at all. It was in the corner coming out from the dining-room.

Q. It was not near the window? A. It was not near the window. The folding doors from the front parlor and the dining-room door, there was a corner there, and the chair was in that corner.

Q. I thought you said something about a window? A. The window was on the other side. The chair was not near the window; it was facing the window, you understand.

Q. It faced the window? A. Yes, Sir, in that corner.

Q. Which window did it face, the one nearest the dining-room or the one farthest from it? A. The one nearest the dining-room.

Q. How near was that dining-room window to the wall of the dining-room, between it and the dining-room? A. There was not much space between.

Q. It was very close, was it not? A. Yes, Sir.

Q. Then this chair that you speak of was near the wall, between the dining-room and back parlor? A. Yes, Sir.

Q. How close to the wall was it? A. As close as it could go.

Q. As close as it could be? A. Yes, Sir.

Q. To that wall? A. Yes, Sir.

Q. The wall that separated the dining-room and the parlor? A. And the parlor.

Q. Close to it? A. Yes, Sir.

Q. Now, where did you stand in the dining-room when you saw— A. I was getting the glass of water at the ice pitcher when I heard whispering, and I looked in, and I saw Mr. Beecher sitting down, and Mrs. Tilton sitting on his knee.

Q. Yes; that you have stated. A. That is what I was doing, getting the water, standing by the table.

Q. Now, did you see this without an effort to see it? A. I saw it.

Q. Did you put your head into the back parlor? A. No, Sir; the folding doors were open.

Q. Wide open? A. Yes, Sir.

Q. Catharine, are you a married woman? A. Yes, Sir.

Q. And your husband is living? A. No, Sir; he is dead.

Q. Now, I think you have said—well, after you had seen what you did see where did you go to? A. I went up to my nursery.

Q. Did you say that at this time that you saw Mrs. Tilton sitting on Mr. Beecher's knee—that she had her hand on his shoulder? A. Yes, Sir.

Q. And was it at that time that you heard the conversation that you have given? A. Yes, Sir.

Q. And that was loud enough for you to hear, was it not? A. I heard them whisper, but all the words I heard said was, "How do you feel, Elizabeth, dear?" "Father," she said, "I feel so so." That is all I heard. [Laughter.]

Q. That is all you heard? A. Yes, Sir.

Q. Could you hear that without an effort, or did you put your ear into the room to hear? A. When I went into the dining-room I heard the words.

Q. And you heard them? A. I heard them.

Q. Was the door that you went into the dining-room by opened by you to go in? A. Yes, Sir.

Q. And closed by you after you? A. It don't be closed; it is always left open—the dining-room door.

Q. I asked you just now if you opened it? A. I did not open it. It was open, and I left it so.

Q. Now, you saw Mr. Beecher, or you knew of his calling at the house at other times? A. Yes, Sir.

Q. Did you not? A. Yes, Sir.

#### MR. BEECHER'S PRESENTS OF FLOWERS.

Q. Do you know how many times, or do you think you know, of his having called? A. He came three or four times before we went into the country, and sent her baskets of elegant flowers to keep around her bed. She had them on large dishes.

Q. And they were there, were they not? A. Yes, Sir.

Q. And everybody saw them? A. Yes, Sir; she told—

Q. And everybody knew where they came from? A. Yes, Sir.

Q. And was Mr. Tilton there? A. No, Sir.

Q. Where was Mr. Tilton? A. That I don't know, Sir.

Q. All the time that you were there? A. Oh, he was there; but he was not there when Mr. Beecher was there.

Q. Oh, I am asking you about those flowers? A. Mr. Tilton was there, and he saw the flowers.

Q. He saw the flowers? A. Yes, Sir.

Q. And he knew where they came from? A. I don't know anything about that.

Q. But every one else did? A. The servants in the house all knew it.

Q. They all knew it? A. Yes, Sir.

Q. And Mr. Tilton knew, I suppose, whether he had sent the flowers or not, didn't he? A. Mr. Tilton did not send them, for her own lips told me Mr. Beecher sent them.

Q. Now, did you never see Mr. Tilton looking at the flowers? A. Mr. Tilton?

Q. Yes. A. No, Sir.

Q. Never? A. No, Sir.

Q. Did you never see him in his wife's bedroom during her confinement? A. Yes, Sir.

Q. You say he called four or five times before you went into the country, you think? A. Yes, Sir; about that, I guess.



HOW MRS. CAREY CAME TO BE A WITNESS.

Q. Now, when did you first mention to anybody that you had observed anything of the matters that you have now testified to? A. Last Friday, Sir.

Q. For the first time? A. For the first time.

Q. And to whom? A. To Mrs. Lines, who visited Bellevue Hospital to see the sick.

Q. A charitable lady who visits there for that purpose? A. Yes, Sir.

Q. And did you volunteer—did you of your own accord mention this to the lady? A. No, Sir; she told me that after I got well she would get me an elegant place in Brooklyn. I told her I had lived in Brooklyn. She said: "Who did you live with?" I told her who I lived with, naming the parties, and I said I lived with Mr. Tilton and Mrs. Elizabeth Tilton, and wet nursed a baby for her. She sat down and asked me more questions, and, of course, I answered her. She asked me what I thought of such a thing, and I said I didn't know. She asked me what I seen and what I heard, and of course I told her.

Q. And that is the way you came to be a witness here? A. Yes, Sir.

Q. Much to the discomfiture of your health, I suppose. Do you remember the first time that Mrs. Tilton went out to church after her confinement? A. I do not. She went before we went in the country.

Q. And do you remember whether she continued in feeble health up to the time of going into the country—whether she remained in feeble health? A. Her health was very poor. She had milk legs.

Q. She suffered from her malady attending upon her confinement? A. Yes, Sir.

Q. And was a great sufferer, was she not? A. Yes, Sir.

Q. And so continued until she went into the country? A. Yes, Sir.

Q. Now, did you have any quarrel or difficulty at that house while you were there as a nurse? A. No, Sir; only what I had with Bessie Turner.

Q. That was between you and her, I suppose? A. Yes, Sir; when she took Bessie's part, I broke her chain—Mrs. Tilton's chain. I was making a chain for Bessie Turner, and she struck me with a hair brush.

Q. Who—Bessie? A. Yes, Sir.

Q. Oh! I don't care about those quarrels. Mrs. Tilton had nothing to do with that; at any rate I don't care if she had. But did you have any difficulty in the house between yourself and your employers, Mr. and Mrs. Tilton? A. Not a word, Sir.

Q. No trouble about your neglect of the child? A. Not a word, Sir.

Mr. Evarts—[To Judge Neilson.] That is all, I think, Sir.

Judge Neilson—[To the witness.] That is all.

#### MR. TILTON RECALLED.

Theodore Tilton was recalled, and his re-direct examination continued.

Mr. Fullerton—Well, Mr. Tilton, after this episode I will ask you something more with reference to that answer that you

gave to the question before the Committee. You say there: "She maintained to her mother in my presence that she had not done wrong." Was that so?

#### CONVERSATIONS BETWEEN THIRD PARTIES OBJECTED TO.

Mr. Evarts—I object to that, if your Honor please. It is an inquiry as to some matter of fact that occurred on the part of his wife towards her mother. I only asked him whether he made a certain answer, and he says that he did.

Judge Neilson—We cannot take that.

Mr. Fullerton—How, Sir?

Judge Neilson—We cannot take that.

Mr. Fullerton—Well, Sir, that proves that this witness made use of a certain expression before the Committee.

Judge Neilson—Yes. Now, you wish to go back of that to a conversation between Mrs. Tilton and her mother.

Mr. Fullerton—I ask him if he didn't say so and so—if he didn't say a certain thing.

Judge Neilson—He says he did.

Mr. Fullerton—Now, I have a right to show why he said that.

Judge Neilson—Not if it involves a conversation with Mrs. Tilton.

Mr. Beach—Didn't they bring out that conversation?

Judge Neilson—In that form to which the witness made the answer.

Mr. Fullerton—It is no matter in what form they made it; they brought it out, as a declaration of his.

Judge Neilson—That he made that answer?

Mr. Fullerton—Yes Sir.

Judge Neilson—I don't think that justifies you to go beyond that and prove a conversation.

Mr. Fullerton—May I not ask him how Elizabeth maintained her innocence to her mother?

Judge Neilson—I think not.

Mr. Beach—Why not? I showed your Honor the other day that that is not a confidential communication made in the presence of a third person.

Judge Neilson—I think it is, when it is between the wife and the mother.

Mr. Beach—There is no authority for that.

Mr. Fullerton—A wife cannot make a confidential communication to her mother.

Judge Neilson—That is the way it is stated in the answer?

Mr. Fullerton—Yes, Sir; she wanted to vindicate herself to her mother from the accusation that she did anything wrong. I want to know how she did that—by what mode of argumentation.

Judge Neilson—Mr. Evarts suggests that they stand precisely the same as if Mrs. Tilton had been talking with a third person, not her mother.

Mr. Evarts—If your Honor please, the point is this. I am not disposed to think that communications between husband and wife are not confidential, when the subject matter is confidential, because the mother happens to be present; I don't believe that the law treats them otherwise than as confidential, but the difficulty is deeper than that. I have asked this witness

whether he made certain statements or not, and he is to say whether he made them or not, and if he made them, and then said anything that qualified them, that is another matter. But the fact that a witness is thus called upon to say whether he has made statements, whether the result is contradictory of himself, and whether he denies them or not, and they are proved afterward against him, has nothing to do with the question approving what the facts were in reality, the whole point being what he said, and you don't prove what he said by either proving or disproving the truth of what he said. Now, my learned friend, because, in an answer to a question of whether he did not make a certain answer, which answer includes in it this passage: "She maintained to her mother in my presence that she had not done wrong"—admitting that he made the answer, undertakes to prove here, as new matter of evidence, what occurred between her and her mother.

Judge Neilson—That is how she maintained.

Mr. Evarts—Yes. What occurred between her and her mother—that hasn't anything to do with the question of what this witness said before the Committee, not the least. Either she did or did not say or do,—say or act in reference to her mother as the witness said. Either way, that she did or did not, is not a matter of proof here. It has nothing to do with the question of whether he said so.

Judge Neilson—Well, the fact being that the witness said so, and the fact being that she, in a certain manner and form which we have not got now, maintained her innocence to her mother, the question is whether they can inquire how she maintained her innocence—that is, in what form or terms.

Mr. Evarts—That is the very point, Sir. Now, it does not tend in the least to affect or vary his statement before the Committee what the terms were. He did not state the terms to the Committee. Whatever he said to the Committees in qualification or reduction or explanation of the part of the statement that I have given, comes within the colloquium which explain the statement. But nothing is better settled than that when the whole point of evidence is what a man said, that it does not license the other party to prove the truth of what he said by the facts concerning which he spoke, because whether it was true or not, had nothing to do with it. It was what he said to the Committee. Now, this is not a novel point of evidence. It arises, and has been often decided, until I supposed that it was well settled, that it is not admissible in corroboration of a view of what a man said, to prove the truth, and therefore argue that he probably said so; or a falsehood, and therefore argue that he did not say so.

Judge Neilson—That is not the question here. The question is here in view of his stating that Mrs. Tilton maintained a certain thing to her mother "in my presence" whether the witness can state in what terms or manner she so maintained it, assuming that this answer is strictly true.

Mr. Evarts—Whether under the license of my inquiry concerning what he said before the Committee it is admissible for them to prove the truth of what he said before the Committee.

Judge Neilson—No, the manner.

Mr. Evarts—Well, the fact concerning which he spoke, when all my evidence was what he said, not anything about the fact at all, but simply his statement. Now, it comes down, as I think your Honor will see, to the inquiry whether you can prove the fact as it did occur, whether it is in mode or form as your Honor intimates, or whether it is the truth of it. The fact cannot be inquired of, when the only inquiry on the other side has been what he stated. It is hearsay evidence about what is not made evidence by any inquiry of mine.

Mr. Beach—The fact they attempt to prove, Sir, by this line of inquiry is that Mrs. Tilton made statements in the presence of her husband to her mother, in which she maintained her innocence. The inquiry of the counsel, and the answer of the witness, does not give the expressions—the language which was used by Mrs. Tilton. It contains the conclusion, the judgment of the witness, derived from what Mrs. Tilton stated to her mother. When the witness says she always maintained, in the presence of her mother that she was innocent, why that is a mere conclusion. It is not giving the details of what passed between herself and her mother leading to that conclusion. Now, the question which we propose to this witness is not any additional fact or circumstance or conversation, but we ask this witness to explain what he meant by the term "maintain;" and how it was that Mrs. Tilton, under these circumstances, maintained her innocence to her mother. The fact that we are getting at the fact that will be used against Mr. Tilton as the evidence now stands will be that he declared that Mrs. Tilton did maintain her innocence. Now, in answer to that, Sir, we have a right to know the particular manner and form of language and expression which Mrs. Tilton used in conveying that impression and conclusion to the mind of this witness which he expressed to the Committee that she thus maintained her innocence. Now, it must be proper, I think, where the counsel by a question calls out a conclusion which must be founded upon the declaration of a party, that we may get the precise declaration from which that conclusion is derived; and that is the precise mode of examination which we propose to pursue, and the precise object which we wish to reach. Their object, and the effect of this evidence, is to show that Mr. Tilton declared that his wife did a certain thing, and we ask to show the manner in which she did it, and that is the whole of this question, if your Honor please, and I know no rule of law which should exclude it; and I know no principle of evidence which leads to the investigation, and the establishment of truth, which should exclude it.

Mr. Evarts—I have offered no evidence whatever as to anything that passed between Mrs. Tilton and her mother, or Mrs. Tilton and this witness. There is my learned friend's mistake. If I had drawn from this witness a piece of evidence that his wife did maintain to her mother, in his presence, her innocence, then my learned friend would be within a rule that could show the particular facts that occurred, I having drawn out the fact of this maintainance by the wife to her mother.

Mr. Beach—That is the very fact you did draw out.



Mr. Evarts—I did not draw it out; I haven't said a word about it. I have asked this witness whether he said so, and nothing else.

Judge Neilson—Perhaps the counsel considers it drawing the facts out.

Mr. Beach—It is proving the fact by the declaration of the party.

Mr. Evarts—I do not prove the fact in the least. It may have been an entire falsehood, just as consistently with any question I have asked, or any answer I have got, or any use to be made of any answer I have got. If I were appealed to for my belief whether it were true or not—

Judge Neilson—You would not say.

Mr. Evarts—I should not say under your Honor's admonition that I should not. [Laughter.]

Mr. Beach—I understand Mr. Evarts's proposition to be that when he proves by the declaration of a party a certain fact that he does not produce it in evidence.

Judge Neilson—Does not draw it out.

Mr. Beach—Yes, Sir.

Mr. Evarts—My learned friend cannot misunderstand me, it would seem to me. Certainly he is able to understand the difference between my asking this witness "did your wife maintain to her mother her innocence?" and his answer that she did, giving a right then to pursue the tenor of the conversation on a re-direct that I had drawn out. When I have asked any such question, when I have sought any such evidence, when I have any such evidence, it will be time then to apply the proposition that, having drawn out the tenor of a conversation by my inquiry concerning the conversation, they can draw out the particulars to correct the tenor.

Judge Neilson—But is there a substantial difference between the case before us, where you draw it out in this form—

Mr. Evarts—I did not draw it out.

Judge Neilson—You have it in the answer.

Mr. Evarts—I haven't it in the answer.

Judge Neilson—But the answer says so.

Mr. Evarts—I haven't it in the answer.

Judge Neilson—Read the answer, please.

Mr. Evarts—I have nothing but his statement that he said so. It is not drawing it out at all, if your Honor please. The only thing that I draw out is that this witness has made a statement concerning his wife's innocence.

Judge Neilson—The statement; not a statement, but the statement which you read to him.

Mr. Evarts—Well, a statement. I asked him if he did not make that statement.

Judge Neilson—That statement.

Mr. Evarts—He has made it. Included in that statement is a recital of his own, that his wife had done so and so. That don't prove that she had done so and so by anything that I had asked.

Judge Neilson—The question is whether you did not draw it out in that form.

Mr. Evarts—Am I not at perfect liberty to contend that there is not a word of truth in what he said—not a word of truth.

Judge Neilson—Undoubtedly.

Mr. Evarts—May that not be the whole point of my inquiry, that he told something that was untrue.

Judge Neilson—When you make an inquiry that calls out the fact that he did state before the Committee, or did state to anybody else, that his wife had always, in her mother's presence, maintained her innocence, is not that the same thing, substantially, as if you had asked him in another form, and getting substantially the same answer.

Mr. Evarts—I think not, if your Honor please, in the least, and I think the cases do distinguish, as I think the necessary sense of the matter is. I do not undertake to examine this witness as to what passed between his wife's mother and her, nor do I undertake to prove the truthfulness of anything that is contained in that answer of his. He has given a certain line of testimony here, bearing upon the question of whether his wife is, or is not, guilty of adultery. I say: "Have you not said so and so?" Now, he denies it, or he admits it, as the case may be. In this case he admits it, as I understand. If he had denied it, why, then, my only point would be to prove, not that his wife had said so and so to her mother—I would not have been allowed to do that, to contradict him, and all I would be permitted to prove was what he had said on the subject, and then I could not confirm, or emphasize, the weight of that proof concerning what he had said, by proving the truthfulness of what he had said. That I understand, if your Honor please, to be an entire distinction—to be the clear distinction between undertaking to give evidence concerning a fact and undertaking to give evidence that a witness has said so and so. Now, I believe nothing is better settled in the law of evidence than that this inquiry into the truth or the fact of a statement concerning which statement alone the witness has been called to give testimony is well settled.

Judge Neilson—I think that is settled.

Mr. Evarts—Now, the counsel hands me a case in Massachusetts. [Reading:]

A witness having testified to negotiations for exchange of horses, another witness was called to prove that the former witness had previously given a very different account of what was said at the time referred to. The former witness was then recalled, and explained that the circumstances testified to by the second witness were those of another exchange on a different occasion. Held, that it was not competent to corroborate him by proof that the other exchange thus referred to actually took place.

Well, you could not confirm it by himself, any more than by any other witness.

Where a witness denies that he stated a fact as another witness has testified that he did, and testifies that he stated a different fact, evidence that the fact existed which he testifies that he stated is inadmissible to corroborate him.

And all turning upon the point that the only inquiry being, not what was true, not what did take place, but what did you say, that that is the end of the inquiry, and that neither on one side nor the other, can the fact be inquired into.

Judge Neilson—The cases are remote, not only geographically, but remote from the very question in issue here. The question is this: You have before you, in the printed book, the question which was put to the witness, and his answer, before the Committee. You cannot be taken by surprise. If you would

before you, you interrogate him: "Was this question put to you, and did you answer as here stated?" reading the answer; and he admits he did, and in that answer is this statement: "That she always maintained her innocence, in my presence, to her mother." And now the simple question is whether the witness—you having introduced the subject in that form—whether the witness can state how or in what manner she maintained her innocence to her mother, not proving that what he did say was true, or contradicting what he said, but simply following out the line further as to the manner in which he stated what you have proved was stated.

Mr. Evarts—But is not the whole point, if your Honor please, the line, as your Honor indicates, the whole line, as to what he said to the Committee, and nothing else. If he went on and explained to the Committee how it was that she maintained before her mother, and if we reduced or qualified what he had stated, then it would be admitted, as a part of the qualification that he gave, but as he did not give it to the Committee it forms no proper qualification of his statement to the Committee.

Judge Neilson—It does not come in as a part of the conversation.

Mr. Evarts—No, not at all; and therefore it comes within the rule that an inquiry into what a witness has said does not admit evidence *pro* or *con* as to the truth of what he said.

Mr. Fullerton—The inquiry is as to what a party has said.

Mr. Beach—The counsel overlooks entirely the distinction which is to be taken between a disinterested witness, sworn in a cause and a party produced in the cause. The effect of this declaration, which they have drawn from Mr. Tilton, is to prove the fact declared that his wife maintained her innocence. That is the ultimate fact, object and effect of this evidence coming from the party which is said to be proved, and is proved, and unless it is contradicted by superior evidence that declaration of the party, that his wife uniformly maintained her innocence, is an established fact in this case, and upon which counsel can argue, and upon which this jury in their judgment can rely. Now, these cases, which are produced by the counsel, relate entirely to a witness who is sought to be contradicted by proof of inconsistent statements made out of court, and there it is ruled that where the witness answering the impeaching witness, referred his testimony to a different occasion than that to which the impeaching witness testified, that it was not competent to prove, as a matter of fact, that this other occasion really existed. It has no relation whatever to the point that is in dispute before your Honor.

Judge Neilson—Nobody can doubt that the witness or the party might say that the transaction related to a different exchange of horses.

Mr. Beach—Yes, undoubtedly.

Judge Neilson—The question was whether he could call some other person to swear to the fact that there was such an exchange.

Mr. Beach—Exactly. Now, they proved that Mr. Tilton, in his examination before the Committee, declared that his wife maintained her innocence under certain given circumstances. I repeat, Sir, that that is not a rehearsal of what passed

between Mrs. Tilton and her mother. It is not giving the evidence, the facts upon which he drew the conclusion that she maintained her innocence. It is a mere expression of the judgment of the witness upon the language which Mrs. Tilton used. Now, we are not seeking to contradict that; we are not denying that; there is no question of impeachment or contradiction. We simply ask the witness to explain what he means by the term "maintained," in what way his wife maintained her innocence, so that he declared that as his conclusion from what he heard her declare. Now, it is said, Sir, in an authority handed me, that "in the re-examination of a witness it will be allowed to ask him any questions necessary to explain matters elicited from him in his cross-examination." Well, what is a very familiar rule, Sir. It is not announcing any new doctrine. Isn't it necessary, Sir, when they can go to your Honor and this Jury with the declaration of Mr. Tilton, that Mrs. Tilton maintained her innocence, in explanation of that declaration of Mr. Tilton to that effect? Isn't it proper to ask this witness how, by what language, by what form of expression Mrs. Tilton thus maintained her innocence? If the declaration of Mr. Tilton to that effect upon a solemn occasion establishes the fact in the absence of all other evidence, that is, that his wife did so assert her purity, isn't it proper for him, in explanation of that declaration, to show in what manner she made that assertion? The fact is, Sir, the proven fact by this evidence is, that she did so in some way, either express or modified, more or less emphatic; and that is arrayed, Sir, as a fact contrary to the charge which is made by Mr. Tilton in this action. Mr. Tilton says Mr. Beecher was guilty of improper connection with his wife. Why, they say, "No; Mr. Tilton, your wife constantly denied this; you acquiesced in it; you promulgated that denial upon an occasion when this very subject was under examination." Now, isn't it proper for us to show, Sir, what were the circumstances which induced him to make this declaration, and how it was that the declaration happened to be made; how the circumstances and surroundings, as well as the character of the language used, modified the force and effect of the declaration which he made in proof of the fact which they seek to establish, that Mrs. Tilton thus asserted her innocence? And is it possible that a party upon the stand can be placed in that position of making a naked declaration which, uncontradicted, is conclusive against him of a fact asserted, without having from him any explanation of the circumstances out of which that declaration arose; and what was the meaning and the purpose of the declaration as qualified by these circumstances? It seems to me, your Honor, to be admissible.

Mr. Evarts—If your Honor please—

Mr. Fullerton—Just wait one moment, if you please.

Mr. Evarts—I want the closing.

[Mr. Fullerton consults with Mr. Beach.]

Mr. Beach—The suggestion of my learned friend is that this brings the question to a very simple and present test. Suppose, instead of putting this question—the effect would be the same precisely, as your Honor will perceive—they had asked



this witness now upon the stand, "Have you ever said that your wife always maintained her innocence?" and he answered "Yes." That is just the result of this evidence. It is a mere change of circumstance; it is not altering the substance or the tenor, or the legal effect of the question. Now, if that question had been thus put, and thus answered by this witness, might we not ask him how she maintained her innocence?

Judge Neilson—The suggestion is that it does not depend upon a matter of form.

Mr. Beach—No, Sir.

Mr. Evarts—My learned friend has suggested now, for the first time, that the rules of evidence are different in respect to a party who is a witness and one not a party, but nothing is more familiar since the introduction of parties, than that they are to be judged in regard to their capacity to give evidence precisely upon the rules that apply to other witnesses.

Mr. Beach—I have not asserted that the rules of examination are different, Sir. I have maintained no such proposition.

Mr. Evarts—Why was the distinction referred to?

Mr. Beach—The distinction was referred to because when you get a declaration from a witness as to what he has said, in an attempt to impeach him by contradictory statements, it is no evidence of the fact which is embodied in the language which he may have used; but when you get that declaration from a party, Sir, it is evidence against him, it proves the fact unless it is overborne by other witnesses or explained.

Mr. Evarts—Well, but if it don't affect the rule of evidence why is it referred to.

Mr. Beach—It does affect the law of evidence, but not the rules of examination, as the gentlemen said.

Mr. Evarts—There is some difference, I suppose, or else it could not be insisted upon.

Mr. Beach—Yes, I should think there was.

Mr. Evarts—Well, I am insisting that you say that there is a difference, and then I understood you to disclaim it. Now, if your Honor please, nothing is truer than that when a party is offered as a witness he stands upon the rules of evidence for his examination and his cross-examination that attend the examination of every other witness, and this is wholly a question of the course of examination, whether our course of cross-examination lets in a certain line of proof for re-examination, and that being a question of the production of the evidence of a party, like the production of the evidence of any other witness, this rule of the consequence of his own line of examination leading to a right of this or that extent is the same for a party as for a witness. Now, there are other rules of evidence that are different in respect to a party, from what they are to a witness; that is to say, to contradict a witness by counterstatements he has made out of Court, it may be necessary to lay the foundation, by inquiries of him, but to contradict a party by statements that he has made out of Court, whether he is a witness or not, you do not need to lay any such foundation. But that is aside from this inquiry. Now, my learned friend insists upon putting it, that the subject-matter of my cross-examination has been what took place between Mrs. Tilton and her mother and Mr. Tilton, or some two of them. There is the

complete mistake. I have not asked a single question concerning any such transaction. I have only asked him, "Did you on a certain occasion, in answer to a certain question, make a certain answer?" and then all that re-direct-examination can do for that situation is to introduce any explanatory observations that he made as a part of that conversation, or within any such range of conversation as the law shall tolerate as forming a part of it; but that is all he stated in qualification, and not any recurrence to the facts of the case concerning which his statement was made.

Judge Neilson—Will you allow me to look at the book, Mr. Evarts?

Mr. Evarts—At the question and answer? The pamphlet—your Honor asks for the pamphlet?

Judge Neilson—Whatever you read from.

Mr. Evarts [To Mr. Shearman]—The yellow pamphlet.

Mr. Fullerton—We have got the yellow pamphlet.

Mr. Evarts—Well we have got plenty of them.

Mr. Fullerton—There is a copy. [Handing a book to the Court.] It is marked, Sir.

Mr. Evarts—Your Honor will observe that the fact, whether the wife admitted or denied her guilt, cannot be evidence for or against either party.

Mr. Beach—That is quite a mistake, Sir.

Mr. Evarts—Well, his Honor has said so.

Mr. Beach—His opinion will be changed upon reference to the authorities, then.

Mr. Evarts—I understand it to be that.

Mr. Beach—I understand it not to be that.

Mr. Evarts—We will see.

Mr. Beach—We shall see.

Mr. Evarts—That ultimate fact is not a matter introduced in evidence on either side.

Judge Neilson—Where do I find this question? Is it marked here?

Mr. Fullerton—It is encircled; it is surrounded with a red line.

Judge Neilson—You extorted from the plaintiff the admission that "she maintained to her mother, in my presence, that she had not done wrong." When you put the question, you had this in print before you, and saw what it was.

Mr. Fullerton—And read it, Sir.

Mr. Evarts—No doubt I read it.

Mr. Fullerton—Not only saw it, but read the whole of it,

Judge Neilson—Did it advisedly?

Mr. Fullerton—Yes, Sir.

Judge Neilson—It was no ground of surprise. No matter whether it was advisedly or not. "She maintained to her mother in my presence that she had not done wrong." The inquiry now is, how did she thus maintain to her mother—Isn't it?

Mr. Evarts—Yes. Now, if I had extracted from him, or extorted, as your Honor's phrase is, that fact, that she maintained her innocence to her mother, if I had inquired concerning any conversation between her and her mother on that subject, they could have gone into the conversation; but I did not.

Judge Neilson—The question is whether you virtually and substantially do not do so here.

Mr. Evarts—Then it comes to this, if your Honor please, whether, when I ask a man if he said so and so, that is equivalent to asking him whether the fact is so and so.

Mr. Fullerton—But the fact is proved against him if he is a party.

Mr. Beach—It is proving by the declarations of a party, a fact.

Judge Neilson—That is the distinction between examining a witness and a party.

Mr. Evarts—There is not any difference between the examination and the cross-examination.

#### VAGUE RULES OF EVIDENCE DEFINED

Judge Neilson—I think I will allow him to answer the question.

Mr. Evarts—Your Honor will be so good as to note our exception. It is the usual hour of adjournment, if your Honor please, and after. [To plaintiff's counsel.] Well, is it long or short?

Mr. Beach—It is short, I suppose. We may as well take the answer.

Mr. Fullerton—Well, it is pretty broad at any rate.

Mr. Beach—Suppose it is. Please oblige me.

Q. Mr. Fullerton—Well, go on and answer the question, Mr. Tilton. I am willing to go on. In what way did she maintain her innocence in the presence of her mother? A. She always used to say, Sir, that she was not to be judged either by her mother or by me, but by God. She believed that God would judge her tenderly. She said she loved God, and she did not believe that God would have permitted her to enter into those relations if they had been sinful, and she said particularly that neither her mother nor I had made it the business of our lives to understand what was right and wrong as Mr. Beecher did; that Mr. Beecher was a clergyman; that he was a great and holy man; that he had repeatedly assured her that their relationship was not sinful, and she did not see how it could be sinful; that he had told her that love justified all things; that love had various expressions; that one expression was the shake of the hand; another expression was the kiss of the lips; another expression was sexual intercourse, and it made very little difference what the expression was; if that love was right, the love itself made rightful or justified all the various expressions of it, and that she believed before God that her love for Mr. Beecher was right and his for her was right; and therefore she did not see how any of the various expressions of it could be sinful. She said she rested on Mr. Beecher's authority for that; that he had told her so over and over again.

Mr. Evarts—Now, your Honor, I move to strike out all this answer.

Judge Neilson—We will take this up in the morning and see.

Mr. Evarts—My motion will be entered.

The Court then adjourned until to-day, at 11 o'clock

## TWENTY-EIGHTH DAY'S PROCEEDINGS.

### MR. TILTON'S TESTIMONY FINISHED.

THE PLAINTIFF'S LAWYERS TRY UNSUCCESSFULLY TO INTRODUCE IN ANOTHER FORM ADMISSIONS FROM MRS. TILTON—LONG ARGUMENT OVER AND FINAL ADMISSION OF ONE OF THE MONTICELLO LETTERS—SHARP RE-CROSS-EXAMINATION—MR. BOWEN'S \$7,000 CHECK PUT IN EVIDENCE—A JURYMAN FAINTS IN COURT.

WEDNESDAY, Feb. 17, 1875.

In opening the court to-day Judge Neilson delivered a severe reprimand to the audience for expressing opinions and interrupting the proceedings with remarks to each other, and with grimaces signifying satisfaction or dissatisfaction. He reminded the spectators of what Hamlet said about silent protest. Mr. Fullerton resumed his re-direct examination of Mr. Tilton by reading for identification portions of the cross-examination of that witness in the Plymouth investigation which contained references in a complimentary form to Mrs. Tilton. The alert Mr. Evarts sprang to his feet at the next question asked by Mr. Fullerton, which was put to discover the nature of the interview between Mrs. Tilton, her husband, and Bessie Turner, at which Mr. Tilton says that the truth of the scandal was stated. This was another effort to get in evidence what would practically be a confession of Mrs. Tilton, and after a long discussion over Mr. Evarts's objection, Judge Neilson allowed the witness to say when the interview occurred. What was said during it was ruled out. Mr. Tilton was asked to remove, if possible, the apparent inconsistency in his testimony in the matter of the interview with Mr. Beecher of Dec. 30, 1870. The "True Story" states that he told Mr. Beecher to go and see Mrs. Tilton, while in his direct testimony he asserted that Mr. Beecher asked if he might go. The Judge allowed the explanation of the witness, despite objection, saying that he saw no inconsistency. The defense having drawn out that Mr. Tilton told Mrs. Morse of his wife's alleged sin, knowing his mother-in-law's infirmity for tale bearing, Mr. Fullerton asked the witness if he thought at the time that Mrs. Morse would repeat what he told her. Mr. Evarts quickly objected, and even after Judge Neilson decided that the witness might reply, he continued to argue tenaciously. The next topic was concerning the Catherine Gaunt letter, the examiner asking the witness if Mrs. Tilton might not have communicated its contents to anybody. A sharp



legal skirmish followed this, and Mr. Evarts met with partial success. Mr. Tilton's views regarding the Commune were asked for, and he answered that the French Communists were those people in Paris who believed in governing that city just as Brooklyn is governed. In other words, said he, the aim of Communism is for local self-government as established in every American city. Rossel was again highly eulogized. The "Winsted affair" was briefly touched on, the witness testifying that his companion at Winsted, whose presence with him there caused the scandal, was a school girl about 16 or 17 years of age.

An interesting discussion, lasting nearly an hour and a quarter, followed on the heels of the attempted introduction by Mr. Fullerton of two letters of Mrs. Tilton to her husband, written from Monticello, New-York. With the rather scanty collection of law books before the lawyers they began to search for law decisions authorizing the rejection or admittance of such letters under the circumstances. Clerks were immediately dispatched to the offices of the counsel near by for more authorities, while Mr. Beach and Mr. Fullerton made addresses covering all the points which suggested themselves in the absence of law authorities. They finished speaking a few moments after 1 o'clock, and notwithstanding it was the hour of recess, Mr. Evarts began his argument. He paused at 1:10, however; and at the suggestion of Mr. Beach the court adjourned to 2:15. After the interval Mr. Beach again took up the line of argument, quoting various law decisions, etc., to show that the letters might be read. Mr. Evarts followed him, and Judge Neilson decided to admit one of the letters, because he thought that the letter affected the question of damages. The letter admitted was written by Mrs. Tilton to her husband, and was dated July 4, 1871. Mr. Fullerton read it with decided effect, giving peculiar emphasis to the words, "Oh, my dear husband, may you not need the further discipline of being misled by a good woman, as I have been by a good man."

Soon after this Mr. Fullerton announced that he was through, and then Mr. Evarts began the re-cross-examination. His questions with Mr. Tilton's answers lasted through the remainder of the afternoon session, and they were carried on sharply and with rapidity, Mr. Evarts pressing inquiries apparently with the intention of concluding with the day. The most important development was the fixing of the day on which Mr. Tilton received the \$7,000

from Mr. Bowen. The witness had said that the money was paid two or three days before the signing of the tripartite agreement, which took place on April 2, according to that document. The check for \$7,000 was produced and bore date of April 4. If Mr. Tilton signed the tripartite agreement on the day it was dated, the check indicates that he received the money two days after signing it, instead of two or three days before.

With a few questions regarding the knowledge of the witness of Mr. Beecher's gifts to Mrs. Tilton, the volume of testimony of Mr. Tilton was shut, and he stepped from the chair.

Just as Judge Neilson's gavel, adjourning the court, dropped at the close of the afternoon session, William H. Davis, one of the jurymen, was observed to close his eyes and suddenly grow pale. Judge Neilson noticed his condition before any one else, and immediately ordered one of the large windows to be opened, the man being evidently about to faint. Mr. Davis partially recovered, and expressed his ability to care for himself, but as he arose to go, he fell helpless into the arms of his fellow-jurymen. He was carried behind the jury seats, and the strong breeze from the open window was allowed to blow over him; cold water was dashed upon him, and a physician sent for. Judge Neilson directed Officer Spaulding to accompany the sick juror to his home.

Mr. Tilton was declared competent to testify on Monday, Feb. 1, and took the witness-chair on that day. His direct examination continued two days and a half. The cross-examination occupied eight days, and the re-direct and re-cross-examination one day and a half more.

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## THE PROCEEDINGS—VERBATIM.

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### DEMONSTRATIONS BY THE LOOKERS-ON REBUKED.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—The experience of yesterday makes it necessary I should ask the audience to be more quiet hereafter. I think a witness ought to be called here and examined without any gentleman present testifying what they think of it, without gentlemen turning to those who sit near them and making remarks about it and making faces, either by way of approbation or disapprobation. And the significance of this you might understand well, if you remember what Hamlet says about silent protest, or silent expressions of opinion, or recall the effect of pantomime, as a very eloquent mode of expressing opinions. As a matter of decency and respect to the Court, and respect to the oath taken by the witness, I must ask that it be discon-

tinued; and I shall make direct personal appeal to any gentleman that I see hereafter offending against this rule.

Theodore Tilton was then recalled, and the re-direct examination resumed.

MR. TILTON'S PRAISE OF HIS WIFE'S GOODNESS.

Mr. Fullerton—Mr. Tilton, when you were before that Committee, did you say anything else in reference to the purity of your wife, in answer to questions put to you at that time? You may look at that and see if it refreshes your recollection. [Handing witness a book.]

Mr. Evarts—Before answering, let us know what it is.

Mr. Fullerton—Yes, certainly.

The Witness—Which part do you desire me to look at?

Mr. Fullerton—The part marked in red there—in rubric. A. Well, Sir, the part to which you call my attention, marked in red, is very badly bungled in its expression. Some of it makes very little sense.

Mr. Evarts—Mr. Fullerton, I asked you to show it to me before he answered.

Mr. Fullerton—Well, I shall not call attention to what it is.

Mr. Evarts—Before any answer is given by the witness let us see it.

Mr. Fullerton—Certainly. [To the witness.] Was the substance of that testimony given before the Committee by you? A. Yes, Sir.

Mr. Evarts—Now, before any answer is given I ask to see it.

Mr. Fullerton—Well, if he said the substance was not given I should not ask him. [Handing the book to Mr. Evarts.]

Q. On your direct examination, Mr. Tilton, you were asked this question: "Have you not frequently asserted the purity of your wife?" To which you answered: "No; I have always had a strange technical use of words; I have always used words that conveyed that impression; I have taken pains to say that she was a devoted Christian woman; that necessarily carried the other; it was like the statement that I carried to Dr. Storrs; I do not think he caught the idea of the statement; as he took it I do not think that it covered the whole; I have said that Elizabeth was a tender, delicate, kindly, Christian woman, which I think she is." Did you answer in substance that?

Mr. Evarts—Now, if your Honor please, I asked the question whether—[taking the book]—I asked him this—if I can find the cross-examination—I remember asking him whether he had not said in answer to a question, "Have you not frequently asserted the purity of your wife?" "No; I have always had a strange technical use of words; I have always used words that conveyed that impression." That, I think, was the point to which I asked my question, and I understood the witness to answer that he did not. I do not mean that he flatly said that he did not, but that he did not recognize—that he made some comment about the phraseology.

Judge Neilson—Well, that was a verbal criticism.

Mr. Evarts—Well, I would like to find if we can, if your Honor please, my cross-examination, because I don't know exactly what my learned friends propose in that connection. It is at the 700th page, it is said

Mr. Shearman—No; it is February the 8th.

Mr. Evarts [referring to testimony]—This is the matter that I introduced—February 8th. [Reading:]

Q. On this same examination, in answer to this question, "Have you not frequently asserted the purity of your wife?" did you make this answer: "No, I have always had a strange technical use of words; I have always used words that conveyed that impression?" A. I cannot see any sense in that word "strange," Sir; I think there must be some misprint; what I meant was that I had always tried—

Q. Well, I ask whether you made that answer or not? A. Well, I did not make use of any such words as "strange technical use;" it is evidently a misprint; you can see it yourself.

Q. I don't know anything about it. You say you did not make that answer? A. Why, I say, Sir, that of course I did not make any such answer: "A strange technical use of words." There is some other—it is wrong—bad English—it is not right. I will tell you what I said—

Q. Well, did you say, "I have always used words that conveyed that impression?" A. I did, Sir, and I always used such words on purpose, to convey to everybody the impression that she was a pure and good woman, and if any word of mine will carry the impression about the earth to-day, I should like to utter it from this stand.

Q. Well, then, you did use words that were intended to convey the impression of the purity of your wife? A. I did, Sir. But I did not use it in that form. I did not use the word "purity." I used other words. I think she is a pure woman.

Q. You used words that conveyed that impression? A. Yes Sir.

Q. But used other words to do it, with the intention to convey the impression of the purity of your wife? A. Yes, Sir.

Q. And with the effect of conveying? A. Yes, Sir; with that deliberate design, for I hold, with Mr. Beecher, that she is guiltless.

Q. And with that constant effect? A. Yes, Sir.

Mr. Evarts—Now, that is the cross-examination.

Mr. Fullerton—Now, my proposition is to prove what else he said at that time, and what words he used.

Judge Neilson—You can do that. Go on.

Mr. Evarts—You mean in answer to that question?

Mr. Fullerton—I mean at first in answer to that question, and by and bye I shall mean differently.

Mr. Evarts—I suppose it is allowable to prove what he has said in answer to that question.

Mr. Fullerton—Now, at the same time of using the language that has been recited in your presence, in answer to the question put to you by Mr. Evarts, did you also say: "I have taken pains to say that she was a devoted Christian woman. That necessarily carried the other. It was like the statement that I carried to Dr. Storrs. I do not think he caught the idea of the statement; as he took it, I do not think that it covered the whole. I have said that Elizabeth was a tender, delicate, kindly, Christian woman, which I think she is." Did you say that also in reply to the question, or that in substance? A. I did not say that about Dr. Storrs, but I said that about Mrs. Tilton. That allusion to Dr. Storrs is very blind and incorrect, bungled; but that allusion to Mrs. Tilton I am inclined to think is correct, because I did say that she is a good woman.

Q. In reply to the question at the same time: "Have you not stated that she was as pure as an angel?"—did you say: "No; Mr. Halliday says I said that; he asked me in Mrs. Bradshaw's presence whether or not I had not said that my wife was as pure



as gold." "No;" I said, "Mr. Halliday, because the conversation to which you allude was this: I said, 'Go and ask Mr. Beecher himself and he will say that she is as pure as gold;' it is an expression which he used; I have sought to give Elizabeth a good character; I have always wanted to do so; I think she deserves a good character; I think she is better than most of us—better than I am; I do not believe in point of actual moral goodness, barring some drawbacks, that there is in this company so white a soul as Elizabeth Tilton." Did you say that? A. I think I did, Sir; if I did not say it I said something like it.

Q. In answer to the question: "Did you not state that in substance to one or more of the gentlemen with whom you were luncheoning?"—did you answer: "In substance, yes; and I state it now, but I did not use the phrase that she had never violated her chastity." Was that the substance of the testimony? A. Yes, Sir.

Mr. Evarts—There is something more.

Mr. Beach—If there is anything there that they want read, read it.

Mr. Evarts—On, well, we don't care.

Mr. Fullerton—There is a great deal more there.

#### CONVERSATIONS BEFORE BESSIE TURNER OBJECTED TO.

Q. In your cross-examination, Mr. Tilton, this occurred: Speaking of the persons to whom you had communicated the story—the scandal—after naming some of them, you mentioned: "And then perhaps I ought to mention that there was a chance interview in my house, between Mrs. Tilton and myself, at which Bessie Turner heard the whole story." Do you recollect when that took place? A. I cannot fix the precise day, but it was the day on which Mrs. Tilton returned from Marietta.

Mr. Evarts—Where is the passage?

The Witness—Either in November or December, 1870.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—Wait a moment, Mr. Tilton. [Passage shown to Mr. Evarts in book.] Well, I think, if your Honor please, I was asking him in regard to, or commenced with, an inquiry about whether the sum and substance was not that he had stated that Mr. Beecher had made unhandsome proposals, with the exception of three persons. [Reading]:

Q. Now, when you were communicating the whole story, that is another matter; but, with the exception of those three persons (which he had named, I suppose,) the sum and substance of what you communicated yourself to other people was the unhandsome proposals or the impure advances? A. Yes, Sir.

Then the witness went on:

Then, perhaps, I ought to mention that there was a chance interview in my house between Mrs. Tilton and myself, at which Bessie Turner heard the whole story.

Q. I have not asked you that. I ask you, a voluntary communication which you made to outside people? A. I don't remember any other voluntary communications to outside people.

Now, what he said about Bessie Turner was not in answer to any question of mine, nor is it a part of anything drawn out. I objected to it at the time, and I called his attention to what

my inquiry was: that it was his own communications. Now, whatever he said there about Bessie Turner should not be made the basis of an inquiry now by reason of my having introduced it in any cross-examination of mine.

Judge Neilson—I see.

Mr. Fullerton—Your Honor will perceive that the learned counsel did not object to that part of the testimony at all.

Judge Neilson—He disclaimed it.

Mr. Fullerton—He disclaimed it only in a measure. The disclaimer was in these words, if it be a disclaimer at all: "I have not asked you that." That is no intimation that he did not take it. It is testimony in this case; it was called out by a question put by the counsel on the other side.

Mr. Evarts—No.

Mr. Fullerton—There was no motion to strike out; and, beside that, Sir, it was a proper answer for the witness to make to the question that was put. Now, I call your Honor's attention to the question and to the answer, and you will perceive that the witness could not discharge his whole duty unless he mentioned that fact, because it was a communication to Bessie Turner. He says that she was present at an interview between himself and his wife when she learned the whole story; she was permitted to be there; it was a communication to her, within the proper signification of the term, and a communication, too, by this witness; and when he was asked to whom he had communicated the story, he was under the strongest possible obligations to mention Bessie Turner with the rest, and he did mention her name as one to whom that story had been revealed. Now, your Honor will bear with me whilst I read this again, and see if I am not correct. After mentioning these names, Mr. Evarts says [reading]:

Q. Well, with those exceptions, was the sum and substance of all that you had ever said to the persons to whom you spoke, that Mr. Beecher had made unhandsome approaches to your wife? A. Yes, Sir; impure proposals; that is the sum and the substance. I did not wish to incriminate Mrs. Tilton.

Q. No matter what you wished; the fact was that that is all that you said? A. That is all I said.

Q. With the exception of these three persons? A. Well, understand me, Mr. Evarts, the three persons to whom I allude are persons to whom I told the story—there were other persons to whom I talked, to whom Mrs. Tilton told the story, and Mrs. Morse told the story.

Mr. Evarts—That you don't know anything about?

The Witness—I do know all about it.

Q. I am talking about persons to whom you communicated information. A. Yes, Sir, but I volunteered the whole story to those three persons, with the addition, perhaps, of Judge Morse.

Q. About him you do not remember? A. I don't remember the exact extent of that conversation with him.

Q. Now, when you were communicating the whole story, that is another matter—but with the exception of those three persons, the sum and substance of what you communicated yourself to other people, was the unhandsome proposals, or the impure advances? A. Yes, Sir; and then perhaps I ought to mention that there was a chance interview in my house between Mrs. Tilton and myself, at which Bessie Turner heard the whole story.

Judge Neilson—Now, you ask—

Mr. Fullerton—Now, I ask him when that took place.

Judge Neilson—Well, I think he can state when, merely the date, Sir; that is all. The date of an event refers—

Mr. Fullerton—Well, I do not propose to limit myself to the date.

Judge Neilson—Well, that is the question now.

Mr. Evarts—Well, that I suppose. I started this inquiry with this. [Reading]:

Q. Now, Sir, did you not say on that occasion (that is, before the Committee), in answer to this question: "I ask what evidence you stated against Mr. Beecher to Mr. Bowen"—in answer to that question, did you not make this answer: "I must answer your questions in my own way. I came to tell you the whole truth, and not fragments of the truth. Mr. Bowen wanted me to speak more in the paper of Plymouth Church," Mr. Johnson said: "Perhaps Mr. Tilton has a reason for not going to Plymouth Church," and thereupon Mr. Bowen was curious to know the reason. I, in a solitary phrase, said that there was a personal, domestic reason why I could not go there consistently with my self-respect; that Mr. Beecher had been unhandsome in his approaches to my wife. That is the sum and substance of all I have ever said on this subject, to the very few people to whom I have spoken of it?"

Now, that was my question; that is, taking a question and an answer from his examination before the Church Committee I, in the ordinary form, asked him: "In answer to that question did you not make this answer?" The witness then says, when I have propounded to him that question [reading]:

A. What is your question?

Q. Did't you in answer to the question read to you, make that answer? A. I didn't make the last part of that answer, Sir, and I repudiated in a public card that report of my interview. I distinctly, before the Committee, charged Mr. Beecher with adultery, and they did not put it in the report.

Q. Well, now, I am not asking you about that. It has nothing to do with it. I have asked you a simple question, whether in answer to the question I read to you, you did not make the answer that I read to you? A. I did not, Sir.

Q. Very well; what you did afterwards I have nothing to do with.

The Witness—I did not, Sir; in other words, that Committee were informed by me—

Mr. Evarts—No matter.

The Witness—It is the last clause.

Mr. Evarts—I have not asked you anything about it.

Mr. Beach—Well, he has a right to answer that he made a part of that reply and part he did not. That is just what he was saying when you interrupted him.

Mr. Evarts—No, he was not.

Mr. Beach—Well, I say that he—

"has," I suppose it should be: it is "was" here, and I again say that he has not, and Mr. Beach says "the minutes will show."

Mr. Evarts—He was talking about the repudiation of the report.

Mr. Beach—He was not, Sir, when the counsel last interrupted him.

Mr. Evarts—Well, I say he was.

The Witness—That was the substance of what I said to Mr. Bowen.

The witness goes on:

I didn't tell him the whole story, but I had told others the whole story, but very few.

Mr. Evarts—Now, I have not asked you. You say that you did not make that last part of the answer? A. No, Sir; I say that the answer is imperfect; part of it is omitted; that is the answer that I generally made. There were a few exceptions to

that answer, namely, Mr. Johnson, Mr. Moulton and Mrs. Bradshaw.

Now, I have gone on with the inquiry:

Q. Well, with those exceptions, was the sum and substance of all that you had ever said to the persons to whom you spoke that Mr. Beecher had made unhandsome approaches to your wife? A. Yes, Sir; impure proposals; that is the sum and the substance.

And then my learned friend has read on from that, and it ends in this question:

Q. Now, when you were communicating the whole story, that is another matter (that is, I excluded all talk when he was communicating the whole story); but, with the exception of those three persons, the sum and substance of what you communicated yourself to other people was the unhandsome proposals or the impure advances? A. Yes, Sir.

Then the witness volunteers—

Then perhaps I ought to mention that there was a chance interview in my house between Mrs. Tilton and myself, at which Bessie Turner heard the whole story.

I certainly had not introduced or inquired about any interview with Mrs. Tilton, or a part. I say then: "I have not asked you that. I ask you, a voluntary communication which you made to outside people"—meaning, outside of his wife.

Judge Neilson—Well, you remarked to the witness—

Mr. Evarts [reading]:

A. I don't remember any other voluntary communication to outside people.

Then I ask him about what he had said to Mr. Moulton, which is on this very subject. Now, my learned friend says that I have made no motion to strike out. Well, if your Honor please, I don't understand that when I repudiate the answer as not being to the question, when it is not to the question, that it is in by my introduction for the omission of a motion to strike out.

Judge Neilson—Well, it would not have been in but for your interrogatory, and being in, you would be at liberty to use it in your address to the jury.

Mr. Evarts—Well, but I repudiate it; I don't want it; it is the very thing that I was not inquiring for.

Judge Neilson—You have made an intimation to the witness which would be a suggestion to be acted upon hereafter, to confine himself to the question. But still his answer, that part of it, stands as well as the other part.

Mr. Evarts—Well, Sir, I now move to strike it out, as not called out by any cross-examination of mine. I certainly had no idea that it was in the testimony.

Judge Neilson—Well, were you not aware that it was a part of the testimony, and that you could use it.

Mr. Evarts—I have never read this testimony since.

Mr. Beach—Will you allow me to make a suggestion?

Mr. Fullerton—Well, he heard it delivered.

Mr. Evarts—I heard it when it was delivered, but I immediately objected to it.

Mr. Fullerton—No.

Mr. Evarts—Well, I say that I did.

Mr. Beach—Will you allow me to make a suggestion?

Mr. Evarts—Yes, Sir.

ARGUMENT OF MR. BEACH.

Mr. Beach—In the first place Mr. Evarts called for the persons



to whom this witness had communicated the whole story, or put questions properly to lead to the naming of the three persons to whom the whole story had been told by this witness. He then goes on to inquire whether, with the exception of these three persons, he had not uniformly told those with whom he conversed that the extent of the offense was impure proposals on the part of Mr. Beecher. In the course of that inquiry it occurs to the witness that in the first branch of the inquiry he had omitted Bessie Turner. He then says to Mr. Evarts, "Now, I ought to say, Mr. Evarts (the sense is 'for the purpose of correcting my previous answer naming only three persons') that there was another person to whom I had communicated the whole story, making four instead of three." Now, isn't that perfectly proper, and isn't it evidence to be taken as a part of the answers to the first branch of the inquiry as to the persons to whom he had communicated the whole story? Mr. Evarts says, "Now, that is not my inquiry now." But yet it was a proper answer to the interrogatory which Mr. Evarts had previously put, and must stand as testimony. How would the witness stand under this examination if the motion is now made to strike out that answer?

Judge Neilson—Yes, Sir, I think it stands as part of the testimony. Mr. Fullerton, put your question; I think you can put that question and get an answer

#### GENERAL DISCUSSION.

Mr. Evarts—Now, if your Honor please, let us understand. When a witness volunteers a statement not in answer to a question, and counsel then rejects it, is it to be understood if counsel on the other side does not insist upon it that it remains in.

Judge Neilson—I think it does; I think you are at liberty to use it.

Mr. Evarts—It is not anything I had asked. I had drawn a line of examination as distinct as possible about this statement that he had made before the Committee.

Judge Neilson—He named three exceptions.

Mr. Evarts—He made then certain exceptions which he had a right to name.

Judge Neilson—Now, he named the fourth exception.

Mr. Evarts—But I did not inquire what he had said to other people at all. As he gave me exceptions, I set them all aside.

Mr. Fullerton—You inquired of the persons to whom he had communicated the whole story, and that is what he said.

Mr. Evarts—I set them all aside, and now say: "With those exceptions that you have made—"

Judge Neilson—I understand that.

Mr. Evarts—Now, I have not inquired at all what he said to other people.

Judge Neilson—That is very plain; I understand that.

Mr. Evarts—This Bessie Turner matter they say comes in now as a part of what he said to other people. Now, I haven't asked a word of what he said to other people including Bessie Turner.

Mr. Beach—You asked for the names of the persons to whom he communicated the whole story; that is calling for what he said, I take it.

Mr. Evarts—I asked whether the sum and substance of what

he said to other people, was not this point that it was only unhandsome proposals, and he said: "With the exception of three persons to whom I told (what he calls the whole story) that was the sum and substance." Now, I don't ask a word of what he said to anybody except the persons to whom he told what was the sum and substance, and now, they say that Bessie Turner comes in as a fourth person, but I understand her to be rejected as not a person to whom voluntary communications were made, because I asked him—I say: "I have nothing to do with that; I am asking you as to persons to whom you made any voluntary communications."

Judge Neilson—I understand perfectly. You did not interrogate him as to what he said to Bessie Turner or to those other three persons, although it is quite apparent upon the face of the examination that he stated the matter to those persons differently from the statement to the persons about whom you particularly inquired.

Mr. Evarts—Now, I have not made an inquiry concerning any statement that he made to any person so as to give them a right to bring that out. But this matter of Bessie Turner stands upon the testimony; it must stand (I supposed it was excluded entirely), not in the position of a voluntary communication by him to her; he speaks of it as a chance interview between himself and his wife, in which we may assume there was a conversation, and Bessie Turner thereby, as he says—

Judge Neilson—It is implied that she became possessed of it in some form. This inquiry is as to the date of that occasion. When was it?

Mr. Evarts—Of the whole story. Now, on the face of that, it is a confidential communication overheard by somebody, which is not permitted to be given in evidence by a party to the communication. Bessie Turner is under no such obligation as would preclude her from stating what she overheard, if she did overhear it.

Judge Neilson—I think, if it is to be excluded, it is to be excluded on the ground that you did not inquire into the conversation.

Mr. Evarts—That is my point, and I think it is a very clear one.

Mr. Fullerton—It is not inquiring into the conversation to have the witness say that he told the whole story to the party?

Mr. Evarts—I did not ask that.

Mr. Beach—That you took as evidence, or allowed as evidence, in this case.

Judge Neilson—Is it not enough that he told the whole story differing as to those three or four persons, from what he said to the others?

Mr. Beach—In what respect did it differ? What was the whole story?

Judge Neilson—It differed in this, that it was the whole story.

Mr. Beach—But we do not understand what the whole story is, and they are at liberty to argue that that was not a charge of adultery—at perfect liberty to argue from that. If a witness is asked whether he told the whole story upon a given subject to a party, certainly, upon re-examination, it is admissible to ask what he told.

Mr. Evarts—I did not ask that question.

Mr. Beach—You got it out, Sir; you got it in the evidence, and you have a right to use it, as the Court decides, and if it be upon the records as evidence, then we have a right to know what it was that he said, constituting, as he says, the whole story.

Mr. Fullerton—I call your Honor's attention again to the question which called out this answer, and I repeat what I have already observed, that the witness was bound under his oath to say what he did in regard to Bessie Turner: "The sum and substance of what you communicated yourself to other people, was the unhandsome proposals, or the impure advances? A. Yes, Sir." Now, if he had stopped there would it have been true? Was he not bound to say, "I communicated something else to Bessie Turner, beyond impure proposals or solicitations?" The counsel upon the other side undertook to limit these communications, to every person, to impure advances or unhandsome proposals; and the witness having stated in the presence of Bessie Turner the whole story, was bound to say: "Sir, I did more than that; I communicated the whole story to Bessie Turner." Now, the gentleman says he did not call it out; I say that he did call it out.

Judge Neilson—You say that, in substance and effect, it is there.

Mr. Fullerton—It is there, and it is because the learned counsel called it out by his question. He put it there; he is bound by it. A lawyer is very apt to take a good thing whether he asks for it or not, if he can get it, and sometimes he has to take something that he don't like because he can't help himself, and this is just one of those instances. And when he undertook to limit the communications of this witness to all persons, to impure proposals, he said: "No; I went beyond that on one occasion; I communicated the whole story to Bessie Turner." I say it is a proper reply, it is a legitimate reply. It was a reply that he was bound to make, and it stands here as evidence in this case. And when the learned counsel comes to sum up this cause to the jury, he has a right to use that as an instrument against us, that that communication was made to Bessie Turner. And, in one view of this case, the learned counsel desired to show, and he will claim that he succeeded in showing, that this witness communicated this scandal to various persons, to attain some object, and among the rest, he will claim that Bessie Turner is to be enumerated. It is certainly very clear, Sir, that this is evidence in this cause, and that we have a right to follow it up on this re-direct, not only to ascertain when it was said, but what was said.

Mr. Evarts—Well, now, my learned friend puts it distinctly upon the proposition that when I am inquiring of this witness, in the line of cross-examination, whether or no the sum and substance of what he said to persons was not—whether he had not stated that the sum and substance of what he had said to other persons concerning this matter, was unhandsome advances, or impure proposals, and the witness answers, "No; to certain persons I had said something else;" then I say, "excepting those persons, wasn't it all that you said," and he says, "Yes," and then he says, "Perhaps I ought to say," [having named the three persons,]—"Perhaps I ought to say that in a chance interview, in my house, between Mrs. Tilton

and myself, Bessie Turner heard the whole story;" I say, "I don't refer to anything but voluntary communications that you made to outside persons," (treating this as a matter between himself and his wife, as it certainly was); then he says, "I don't remember any other voluntary communications to outside people"—now it is claimed that, because I, not asking anything concerning any interview at which he has said anything, but the sum of the interview being that it was impure proposals, that, therefore, because he said there were some other people to whom he made other statements, that they have a right to inquire what those statements were. Now that is what it comes to, and Bessie Turner cannot stand any better than the rest. I suppose she will stand very differently, whenever the matter is approached and disclosed in regard to the circumstances of its being a statement to her. But that does not alter the proposition that I am not responsible for its introduction, whether in course of this inquiry in which I have not asked one word about any interview with anybody with whom he said that he didn't limit his interview to the impure proposals. That was my whole inquiry. I wanted only an answer to whether he had said so before the Church Committee. It ended in a discrimination as to what he had said, and what he had not said, which was all well enough; and then came in these inquiries in which I did nothing but exclude all conversations, with anybody and everybody, which had had for their subject anything but the impure proposals, and, having set them aside, I abstained entirely from any inquiry as to what passed between them and those persons. And now my learned friend says they have a right to introduce it.

#### THE FACT OF THE BESSIE TURNER CONVERSATION ADMITTED.

Judge Neilson—I understand that. [To Mr. Fullerton.] Is this statement of the Bessie Turner matter very material?

Mr. Fullerton—Very material.

Judge Neilson—Let us have it.

Mr. Fullerton—When was the conversation that Bessie Turner was present at?

Mr. Evarts—Your Honor will note my exception to any inquiry, as not based upon any cross-examination of mine, and not lawful in itself to them.

The Witness—I remember, Sir, very distinctly that it was on the day of Mrs. Tilton's return from Marietta, Ohio. I had gone in the morning in a carriage to meet her at the depot; this conversation took place in the afternoon of the same day, but I don't remember the exact day; I can't give the day of the month; it was either toward the close of November or in the beginning of December, 1870; that is as closely as I can state it.

#### THE CONVERSATION RULED OUT.

Q. Well, you say Bessie Turner heard the whole story; what was the whole story that she heard?

Mr. Evarts—Now, I object to that.

Judge Neilson—Well, I must rule that out, and it is quite ap-



parent now that as to Bessie Turner and three other persons he made a statement of this matter quite different and quite beyond the statement which he had made to the other persons—the statements about which Mr. Evarts inquired. I do not think he has opened the door to bring in the conversation, either with Bessie Turner or with the other three persons, and I have no doubt that the jury understand the attitude of the witness on that subject. Certainly I do.

Mr. Fullerton—Well, Sir, I haven't any doubt that they understand it, but I think they would understand it a good deal better if they knew what the Bessie Turner story was. Your Honor will perceive—

Judge Neilson—This is clear, very clear, from the whole testimony that some of these persons, about whom the learned counsel inquired particularly, heard the statement limited to impure advances; equally as clear that as to three or four persons they heard much more—a very different charge. That is very clear upon the testimony as it stands, but I do not think he has inquired as to the conversation with those other persons sufficiently to justify us in receiving it.

Mr. Fullerton—Now, your Honor will perceive at a glance the object which the other side had in view in giving this evidence to show that in the various conversations between the witness and third persons that he limited the charge against Mr. Beecher to impure advances.

Judge Neilson—Now, I understand the motive of the witness: it has been revealed to us clearly and distinctly—the purpose and motive of the witness and also the exception as to those four persons.

Mr. Fullerton—That is very true, Sir; but I say again, their object was to limit these charges made by the plaintiff in this suit against Henry Ward Beecher, to impure proposals. We know just exactly what communications were made to these other persons named, communications that were impure proposals, and nothing beyond that.

Judge Neilson—Now, as he was an eye-witness, his versions of it to them, whatever his motive might have been—we understand his motive don't touch the principal fact at all.

Mr. Fullerton—But, Sir, they have laid the whole foundation for the argument that no adultery was committed, because the plaintiff in this case did not charge adultery in these conversations.

Judge Neilson—If that act was committed it would equally exist whether the plaintiff charged it or did not. He might gloss it over, qualify it, seek to get rid of it, try to protect his wife, be as sentimental as he pleased about it, but still the fact would remain.

Mr. Fullerton—The fact would remain undoubtedly, but if he glossed it over in nine cases, may we not show that in the tenth case he stripped everything from it and showed it in all its hideous deformity?

Judge Neilson—You might if he had inquired into the conversation; I think he did not.

Mr. Fullerton—They did inquire whether he had not limited himself to the charges of impure advances, and whether he had made any other charges to any other person, and he says, "I made the whole story known to Bessie Turner in the conversa-

tion between me and my wife when she was present." Now, we ought to know what that whole story was; we ought to be able to meet the other side by saying that although he limited that charge to impure advances in several instances, yet in one instance he told the whole truth. We are entitled to that; we are entitled to it in consequence of the course pursued by the other side. Shall they prove that a communication was made to Bessie Turner, and we not be able to prove what that communication was? I am aware that the counsel upon the other side do not wish it, and I am equally aware that his inquiry called it out. The answer was the legitimate result of that inquiry, and when we learn now that in several instances he qualified this charge and subdued it, may we not show that in another instance he told it just exactly as it was?

Judge Neilson—You could if it was a conversation they inquired into. I think it don't come within that rule.

Mr. Fullerton—Suppose, Sir, they put Bessie Turner upon the stand, to prove Mr. Tilton did not communicate the whole story to her.

Judge Neilson—Then you could recall him to meet that; that is plain enough.

Mr. Fullerton—I think it is equally plain that we might meet it now.

Mr. Evarts—Then I should have gone into the conversation.

Mr. Fullerton—You might go into it a little more fully.

Mr. Evarts—I have not gone into it at all.

Judge Neilson—That is my present view of it.

#### WHO SUGGESTED MR. BEECHER'S CALL ON MRS TILTON.

Mr. Fullerton—We must adopt it, then. [To the witness.] Mr. Tilton, I call your attention to what occurred between you and Mr. Beecher at the time of the interview on the night of the 30th of January, 1870? A. That date must be wrong.

Q. The 30th of December I should have said; I was wrong by one or two days. Who suggested that Mr. Beecher should go and see Elizabeth? A. Mr. Beecher asked permission to go.

Q. And you have already given us, I believe, your reply? A. Yes, Sir.

Q. I understand you in your cross-examination to say, also, that you told Mr. Beecher to go and ask your wife whether she had not written you the letter? A. No, Sir; I did not. My wife asked me if I said such and such a thing.

Mr. Evarts—The record will show what I asked him.

Mr. Fullerton—But I want him to explain it.

Mr. Evarts—You are not entitled to ask him to explain it.

Judge Neilson—He may let him say what it was.

Mr. Evarts—I think, if your Honor please, that my cross-examination of the witness does not give them the right to explain that.

Judge Neilson—Suppose there was an inadvertence, a blunder.

Mr. Evarts—Then I agree that that be brought out in the proper form.

Judge Neilson—Let him explain that.

Mr. Fullerton—I shall not bring it out in any other form than I have now got it in, because I am correct about it.

Mr. Evarts—Your Honor understands, and I think you intend to apply the rule to protect the rights of both parties in regard to this matter, and we mean that the adherence shall be maintained to that rule throughout. Now, the direct examination was this—

Judge Neilson—I recollect it, including a very solemn injunction which he gave the defendant on the occasion of his going.

Mr. Evarts—I did not interpose any new matter in cross-examining him about it.

Judge Neilson—You examined him in regard to it?

Mr. Evarts—I cross-examined him.

Judge Neilson—Now, if you got a new answer or a statement that differs from the other, he can call his attention to that.

Mr. Fullerton—The question put on cross-examination was: "I then said to him, 'It is but a few squares to my house; go and ask Mrs. Tilton for yourself whether or not she wrote the letter.'" A. Ah! that was my suggestion, not his.

Q. I ask whether you did not say that to him? And you answered, "I do not remember any such expression as that. Do you take it from my cross-examination before the Committee?" etc.

Mr. Evarts—Well,

Mr. Fullerton—And then afterwards—

The Witness—That was one of the softening passages from the True Story, as it is called.

Mr. Evarts—Well, no matter. I ask to have that answer of the witness stricken out if it is taken.

Judge Neilson—Yes.

Mr. Evarts—No matter; I ask to have that stricken out, if it is taken.

Mr. Neilson—Yes.

Mr. Fullerton—Here he was asked:

I am not asking about that; I am trying to get the facts. Did you say it is but a few squares to my house, go and ask Mrs. Tilton for yourself, whether or not she wrote the letter? A. Well, I may, perhaps, have used some such expression; I do not remember; but it was not in reference to any doubt.

Mr. Evarts—Well, what next?

Mr. Fullerton—"No matter, you used the expression? A. That was only as to his surprise," &c.

Mr. Evarts—That is all I introduced.

Mr. Fullerton—My question now is whether the suggestion originated with you or Mr. Beecher, that Mr. Beecher should go and see Mrs. Tilton.

Judge Neilson—He can answer that. What is it?

The Witness—The suggestion originated with Mr. Beecher.

#### AN INCONSISTENCY EXPLAINED.

Mr. Beach—There is, Sir, an apparent inconsistency between these two answers, and I ask that the witness may be permitted to explain what he means by the answer he gave on the cross-examination, that he told Mr. Beecher to go and see his wife, to see whether she wrote the letter, whereas now he answers differently on the direct examination—that the visit came as a suggestion from Mr. Beecher.

Judge Neilson—My recollection of it is that Mr. Beecher, having spoken of going, himself introduced the idea, and the witness consented; that is the way that it looks to me.

Mr. Beach—Very well. I want it so to appear on the record. Your Honor's ingenuity would, of course, see the correct explanation, but it should stand on the record.

Mr. Evarts—We are not commenting upon evidence, but the question is upon getting it, and getting it legally. This witness, who is also the party, had a very free utterance of this interview, without interruption, and in his own way. I cross-examined him as to a particular point and in that cross-examination he has given the answers that have been read to your Honor, which come to this, that Mr. Beecher indicating surprise that his wife should have said any such thing, he (the witness) said, "It is but a few squares to my house, go and inquire for yourself;" or something of that kind.

Judge Neilson—I don't remember any inconsistency myself. But if there be any, or any inadvertence or mistake, it should be explained; because it is our duty to take care of this witness as well as any other witness.

Mr. Evarts—Yes; if your Honor please, and of the truth also.

Judge Neilson—Undoubtedly, and that is the very object. We do not take care of the truth by getting an answer in an improper form and then holding the witness to it.

Mr. Evarts—And we do not take care of the truth by allowing a witness to modify his answer as many times as he pleases. The object, no doubt, is to get the truth, and the laws of evidence are so framed as to secure the best means of obtaining it, and they do not look to the protection of the witness, except so far as to protect the truth as it comes from him.

Judge Neilson—No doubt.

Mr. Evarts—No doubt that is your Honor's intention, that he should have an opportunity to state the matter truly. He has had that opportunity in his narrative, as given by him, without interruption. I take up a single proposition, to prove by him that on the indication of surprise from Mr. Beecher at the contents of what he had communicated to somebody as from his wife, he says: "It is but a few squares to my house," etc. Now, if that is a contradiction of his first statement, there it stands; and I think the learned counsel has been allowed to go as far as is permissible when he has asked a certain question which has been asked and answered, whether it originated with him or Mr. Beecher, and he has answered that it originated with Mr. Beecher. Now, that does not give them the right to reproduce the original examination at all.

Judge Neilson—It gives them the right to correct any apparent discrepancy if there be any.

Mr. Fullerton—I will put this question. [To the witness.] Whatever you may have said to Mr. Beecher in regard to going to your house to see Mrs. Tilton, was it before or after he asked permission to go? A. It was after he asked permission to go; and the phrase about a "few steps" is part of the narrative called "The True Story"—the softening—

Mr. Evarts—Stop! I object to that.

Mr. Beach—Confine yourself to the question.

Mr. Evarts—I wish to have that struck out.



Judge Neilson—Yes, this last remark. It is sufficiently distinct. Now, proceed, Mr. Fullerton.

Mr. Evarts—That was not an answer to any inquiry.

#### MRS. MORSE'S KNOWLEDGE OF PRIVATE INTER-VIEWS.

Mr. Fullerton—Now, Mr. Tilton, in your cross-examination, in speaking of Mrs. Morse, the question was put, "But how did she find out what had passed confidentially or privately between Mr. Moulton, Mr. Beecher and yourself?" and I understood you to answer, "Because I told her and she told all the world." Did you mean to be so understood? A. No, Sir; that was an inadvertence. I never talked with Mrs. Morse later than October or November, 1870; that was before Mr. Moulton came into the case. I have had no conversation with Mrs. Morse for four or five years.

Q. What you told Mrs. Morse was prior to Mr. Moulton's having anything to do with the matter? A. Yes, Sir.

Mr. Evarts—That the witness was about to correct next morning on his cross-examination.

Mr. Fullerton—I want him to correct it a little more fully.

The Witness—All the conversation I had with Mrs. Morse was with reference to facts that had been previously communicated by Mrs. Tilton, and not first by me.

Q. Now, did you suppose that Mrs. Morse was going to communicate what you told her to any one?

Mr. Evarts—I object to that question.

Judge Neilson—That is immaterial.

Mr. Beach—If your Honor please, Mr. Evarts made a significant remark after getting out the answer—"You did this, knowing of her infirmity."

Judge Neilson—Yes.

Mr. Beach—Now, may we not, in reply to that, get from the witness whether he told it expecting that she would repeat it?

Judge Neilson—Thus reminded, I think the question is proper.

Mr. Evarts—Your Honor will please to note our exception.

Judge Neilson—Yes. The witness may answer that question.

Mr. Fullerton—Whatever you communicated to Mrs. Morse, did you suppose that she would repeat it to any person? A. No, Sir; I never told anything to her; she was nearly wild when she heard the story from Elizabeth, and I tried to keep life in her body for a while.

Mr. Evarts—I object to the answer. He was asked only in reference to what he communicated to Mrs. Morse, whether, or no, he believed that she would communicate it, and now he tells us something that his wife told her.

Judge Neilson—He explains; I think the explanation may stand.

Mr. Evarts—Not an explanation of what he said.

Judge Neilson—Yes; the whole thing may stand.

Mr. Evarts—Are we not at the mercy of the witness?

Judge Neilson—Parties are always at the mercy of witnesses; I think the answer may stand.

Mr. Evarts—The answer to a question which is limited, "Did you suppose that Mrs. Morse would communicate what you told her to any one else," would be yes or no. His entire answer, if

your Honor please, would be, "I never communicated anything to her"—if that is a part of it; but is he then to be allowed to go on and say what his wife communicated to her?

Judge Neilson—I think it is a proper answer taken as it stands altogether.

Mr. Evarts—He certainly would not be allowed to interpose as an answer to the question what his wife communicated to Mrs. Morse. Certainly the inquiry did not embrace anything that his wife communicated to Mrs. Morse, and did not have the least reference to anything except what he himself communicated to Mrs. Morse; and yet under the line of cross-examination and of direct examination the witness made a voluntary statement concerning what his wife told Mrs. Morse, and that he had some opinion or other.

Judge Neilson—The question assumed that he had communicated something to Mrs. Morse. He had a right to qualify the statement and he has done so.

Mr. Evarts—He has a right to say that he did not communicate anything to Mrs. Morse; he has not a right to say that his wife did communicate it.

Judge Neilson—He has a right to indicate the fact somehow. It would not do to say that he did not communicate it, and let it stay there. I think the answer must stand.

Mr. Evarts—I move to strike out all parts beyond the answer to whether he supposed that she would repeat it—all in regard to what he said, and all that has reference to his wife.

Judge Neilson—Yes.

Mr. Evarts—And I except to your Honor's ruling admitting it, of course.

#### MR. BOWEN'S FORFEIT JUST.

Mr. Fullerton—Now, Mr. Tilton, the next question. Did you regard these \$7,000, which you claimed from Mr. Bowen as your due under the contracts—as your just due? A. Yes, Sir; every cent of it.

Q. You supposed you were entitled to that sum by the terms of your contracts, the contracts having been ended? A. I knew that I was; no question about it.

Judge Neilson—You had no question in your mind? A. Nor in Judge Reynolds's mind.

Judge Neilson—Well, the arbitrators settled that; it was due to you, no doubt.

Mr. Evarts—I ask that what he said about Judge Reynolds's mind be stricken out.

Judge Neilson—Yes; strike that out.

#### MRS. WOODHULL'S BUSINESS.

Mr. Fullerton—One word now with regard to Mrs. Woodhull. Was she a broker in Broad-st.; did she keep an office there? A. Yes, Sir.

Q. A public office? A. Yes, Sir.

Q. Like other brokers? A. Yes, Sir.

Q. Advertised herself as a broker? A. Yes, Sir.

#### HOW THE CATHERINE GAUNT STORY CAME OUT.

Q. I understood you to answer with reference to the Catherine Gaunt letter that anything which any one

knew from that letter must have come from you, because that letter was written to you. Do you know that your wife did not communicate to some one the contents of the Catherine Gaunt letter? A. She very frequently spoke about Catherine Gaunt.

Mr. Evarts—I object to that.

Judge Neilson—Let the stenographer repeat the question.

[Question read by TRIBUNE stenographer.]

Mr. Fullerton—Did you, or not, know that she had not communicated the contents of the Catherine Gaunt letter to any one?

Mr. Evarts—I object to any answer beyond yes or no.

Judge Neilson—And he can say yes or no; that is the way to answer.

Mr. Evarts—I object.

Mr. Fullerton—Then I will alter it.

The Witness—Either yes or no would not be a conscientious answer.

Judge Neilson—Did you know that she did not communicate it to any one? A. I don't know, Sir.

Mr. Beach—You do know.

Mr. Fullerton—He does know.

Judge Neilson—Or the other way.

Mr. Fullerton—Do you know the fact that your wife communicated the contents?—

Mr. Evarts—Wait; I object.

Mr. Fullerton—I am putting another question. Do you know that the contents of the Catherine Gaunt letter were communicated by any person other than yourself? A. Yes, Sir.

Mr. Evarts—I ask that that answer be stricken out. It was known that I was to object to the question; I rose to object, and Mr. Fullerton said to wait until the question was put.

Mr. Fullerton—It may be considered as unanswered, for the

Mr. Evarts—Very well; then it is out. Now, I object to that, so far as any answer embraces anything said or done by his wife.

Judge Neilson—He can answer without referring to her.

Mr. Fullerton—He did answer the question without referring to her. He did not embrace Mrs. Tilton.

Judge Neilson—Let the stenographer read the answer. [Answer read.] That may stand.

Mr. Evarts—Understand me as objecting and excepting to its admission.

#### THE CELEBRATION OF ROSSEL'S DEATH.

Mr. Fullerton—I come now to the subject of the Commune.

The Witness—What subject?

Q. The Commune of France. What do you understand by the Commune of France? A. May I explain, Sir?

Q. Briefly. A. After the fall of the Empire, France was agitated with the question, what should be the new government? Those of our citizens who love America and American liberty said, "Let us have a government such as they have in the United States, a government of representation;" and the Communists, so-called, are those people in France who believe in governing Paris by precisely the same system of government

under which we live in Brooklyn. For instance, what would be thought if the Mayor of this city should insist upon appointing all the Aldermen of all the wards, and denying to the people of the wards the right to elect their Aldermen? It would be a revolutionary proceeding. We hold to the opposite view. Every ward in this city elects its Aldermen; and the Mayor has no right to interfere. Now, the Communists in Paris insisted that, in the formation of the new government, every ward of the city—in other words, every Commune—should elect its representative, and that the Mayor should not appoint its representatives. In other words, "Communism" in Paris is local self-government as we practice it in every American city. On the other hand, that which is called "Republicanism" in France is that which, if it were brought into this country, would be denominated despotism, and would not be permitted for an hour. That is Communism. Every democratic citizen of Brooklyn, if he lived in Paris, would, by virtue of his American antecedents, and the principles of Thomas Jefferson, be a Communist, and nothing else.

Q. Whilst you approved, then, of the general principles of Communism, you did not approve of the excesses to which they went? A. No, Sir; neither did the leading Communists; neither Rossel.

Q. Now, I come to Rossel. What did you understand Rossel was put to death for? A. For a purely military offense.

Q. Did you understand that he was the murderer of the Archbishop of Paris and the Chief Justice? A. No, Sir; there was no man who protested more eagerly against it; there was no man who had a greater respect for religion than Rossel, either Catholic or Protestant; and the very last hours of his life he spent with pen and ink, writing a brief, beautiful and pathetic address to his fellow Communists of France, and the substance of which was: "My Brethren, if you ever rise to power in this country, never commit any atrocity: it will be unworthy of Liberty and of us who are dead."

Q. Did you understand that he was arrested by the Communists? A. Yes, Sir; and the head of the Commune, or the head of the party that was associated with the Communists, has written violently against Rossel—denounced him. Rossel was a Christian man, the son of a Scotch woman, brought up in the old Calvinistic faith, and he died like a hero and a martyr.

Mr. Evarts [interrupting]—If your Honor please, we don't want the history of Rossel.

Mr. Beach—I don't know; they have attempted to stigmatize us because we took part in a procession in his honor.

Mr. Evarts—I object to it.

Judge Neilson—Let it stand as it is; I think the explanation proper in view of what was called out.

Q. Now, what was this procession in New-York which you joined? A. I will tell you exactly what it was. It was not a procession in which the great mass of men joined in, because it was for or against the Communists, for there were Communists in it and anti-Communists in it; a man who walked near me during part of the procession, an old man, was a Roman Catholic. The object of that procession was this: Rossel had been put to death, as I described it the other day, by a judicial murder; there was a procession to celebrate his death by a public



funeral in New-York. A certain officer of the police (I have forgotten his name; perhaps the Superintendent) issued an edict saying that such a celebration should not be held. That edict immediately elicited on the part of the press such an outbreak, and on the part of all good citizens who love Liberty and Free Speech in every country, such indignation that many thousands joined in the procession for the purpose of testifying their regard for American Liberty. And, if it had been a procession for any other purpose, if it had been to any other end, the simple fact that the right of procession was denied would have brought me in it, and so would it thousands of other men who were there; it was not a procession of Communists more than of good citizens.

#### THE WINSTED SCANDAL.

Q. That brings me to the Winsted story. Who suggested that you should take this little sick girl to Winsted? A. My wife suggested it; after I got ready to go on the journey she begged me to take this little girl with me.

Q. Where was this school girl staying? A. At my house.

Q. State why it was that she wanted to hear your lecture and why it was Mrs. Tilton's wish that you should take her? A. She was a friend of ours and a *protégé* of my wife's, and a member of a family all of whose members had interchanged visits at my house; she was a school girl at Connecticut and had had a severe illness, and had come to our house to be nursed; and when I was going to Winsted to lecture, as on a previous year I had gone with Mrs. Tilton, and we had such pleasant hospitality shown to us by a certain family there, I asked Mrs. Tilton if she would not come again. She said no, but asked me to take—(I won't name the name); so, after I had got ready to start, and my bag was packed, I waited to take her; expecting when we got to Winsted to be entertained at the house where I was previously entertained; but the family were away, and we had to go to a hotel. There never was a better girl in the world than she; and it is an outrage to introduce her name with any reference to the case.

Q. What was the young girl's age? A. I don't know. This was when she was a school-girl. I never asked her age.

Mr. Beach—Well, about, from her appearance? A. I should think sixteen or seventeen; I don't know.

#### DIRECTION OF MR. TILTON'S SPENDTHRIFT TENDENCIES.

Mr. Fullerton—Now, in one of your letters you have spoken of your spendthrift tendencies, and asked your wife to check you. What had you reference to—what was the character of the expenditure referred to? A. Well, Sir; I was always buying costly things to beautify my house—pictures, books, furniture, and the other luxurious frivolities which many rich men can indulge in and which men who are not very rich cannot. That is all. I don't exactly understand the character of the question.

Q. That is a sufficient answer. I didn't know but what it might have been in riotous living. I wanted to show it was not in riotous living, that you expended your money. A. No, Sir; I never indulged in riotous living.

Mr. Fullerton—I supposed not.

Mr. Evarts—There is no inquiry of that kind. I ask that that be struck out.

Mr. Fullerton—The riotous living?

Mr. Evarts—Yes; the riotous living.

Mr. Beach—Well, it is very proper.

Mr. Evarts—It is in answer to no question.

#### MR. SCHULTZ'S ADVICE ABOUT THE GOLDEN AGE.

Mr. Fullerton—Do you recollect the conversation with Jackson S. Schultz in regard to your matters? A. Yes, Sir.

Q. State what you said to him?

Mr. Evarts—You mean the conversation I inquired about?

Mr. Beach—Yes, Sir.

Mr. Fullerton—Yes, of course.

The Witness—I went with Mr. Franklin Woodruff, in the month of either January or February, 1871, shortly before the founding of *The Golden Age*—I went with Franklin Woodruff to see Jackson S. Schultz. We went over to his store. We were told by his partner that Mr. Schultz was home. We went to Mr. Schultz's house. He was then sick with the gout, and gave us some good advice about what you call riotous living, and Mr. Woodruff laid before Mr. Schultz the project for establishing *The Golden Age*, and asked Mr. Schultz to contribute to the capital and become one of the stockholders. Quite a long conversation ensued between Mr. W. Woodruff and Mr. Schultz, I taking a very subordinate part. Toward the end of that conversation Mr. Schultz said that the enterprise is one of a character which ought to have the endorsement, he thought, of Mr. Beecher. He said that if Mr. Beecher would take part in the paper, or would approve of it, that it would be likely to succeed. Mr. Schultz asked me if Mr. Beecher was interested in it. I told him that Mr. Beecher had expressed a willingness to be interested in it—to do something for it, and then followed some conversation between Mr. Schultz and myself. I cannot report the phraseology of it, but the pith of it was this, that I could not put myself under any obligation to Mr. Beecher, but I did not tell Mr. Schultz the reason why.

Q. That was the substance of the conversation? A. That was the substance of the conversation; Mr. Woodruff was present throughout the conversation.

#### THE PERSON MEANT BY "MR. B."

Q. In many of these letters which have been introduced in evidence, written by your wife she speaks of "Mr. B.," but who was the Mr. B. of whom she spoke? A. The Rev. Henry Ward Beecher.

Q. And was Bessie Turner known by any other name in the family; was she mentioned in any other way than as Bessie, or Bessie Turner in the family, or in the letters which Mrs. Tilton wrote? A. She was sometimes called Libby.

Q. And whenever Libby occurs in the correspondence in evidence reference is made to Bessie Turner? A. Yes, Sir.

NO CONNECTION BETWEEN MR. BOWEN'S PAYMENT  
AND THE COVENANT.

Q. Was there any connection between the payment of the \$7,000 by Mr. Bowen, and the execution of the tripartite agreement which has been put in evidence? A. Not the slightest, Sir.

Q. I understand you to say the \$7,000 was paid in advance of the execution of that paper? A. Yes, Sir.

Q. It was not the condition precedent that the paper should be executed before the money was paid? A. No, Sir.

Q. No connection between the two things as I understand it? A. Not a shadow of connection.

MR. TILTON'S STORY TO MRS. BRADSHAW.

Q. You have been asked whether you didn't tell the story to Mr. Johnson and some others, and Mr. Richards, I believe, and Mrs. Bradshaw. What did you tell Mrs. Bradshaw?

Mr. Evarts—I have not asked that.

Mr. Fullerton—Yes, Sir, you did.

Mr. Evarts—Not in the least. There is something in the direct examination about that. I have not asked any question concerning anything he told Mrs. Bradshaw; I have not asked any question concerning it.

Mr. Fullerton—The gentleman forgets.

Judge Neilson—There were so many questions that I cannot assume to remember it.

Mr. Fullerton—It seemed the learned counsel has put so many that he has forgotten some of them himself. He asked the question, whether he told this story and to whom, and mentioned Mr. Johnson, Mr. Richards, Mrs. Richards and Mrs. Bradshaw.

Mr. Evarts—This is the same subject we have been just over, and which your Honor excluded.

Mr. Fullerton—No; not the same subject.

Judge Neilson—That is one of the persons classed.

Mr. Evarts—No, Sir; she is one of the three persons. I have not asked anything more.

Mr. Fullerton—No, Sir; it is at another time and on another inquiry, and as to another subject altogether. The other inquiry was as to showing "The True Story," which was to Mr. De Witt, Mr. Duncklee, Mr. Clarke, and so on.

Judge Neilson [To Mr. Beach]: Can you find that, if you please.

Mr. Beach—I will try, Sir.

Judge Neilson [To Mr. Beach]: Are you looking for a needle in a hay stack?

Mr. Beach—I am hunting for a diamond on the sea shore.

Mr. Fullerton—It is there; if you look you will find it. That is certain. [To Judge Neilson]: Whilst Mr. Beach is looking for it, I will go on with something else, if it meets your Honor's approval.

Judge Neilson—Well.

MRS. WOODHULL'S DEemeanOR BEFORE MR. TILTON.

Q. You have spoken of several visits which you made to Mrs. Woodhull at her residence in the City of New-York. I wish to ask you whether at the time these visits

were respectively made her husband was at home? A. Yes, Sir.

Q. In every instance? A. I think he was; in every one. I don't think I was ever at the house when he was not there.

Q. You have spoken of going to the house and into every room of the house. At whose request was that? A. Mrs. Woodhull's request.

Q. And what object did she expect to accomplish by taking you through the house, as she said at the time? A. She asked me if I heard her house was a house of ill repute. I told her I had heard it. She asked if I would do her the favor to see what answer she could make to it. I said I would listen. Said she, "I don't want you to listen; I want to show you something; I want to show you the house." She took me through the house, and it was, as I stated, perfectly empty, like a new house.

Q. What was Mrs. Woodhull's demeanor, in your presence, whilst you were at her house? A. She always acted like a perfect lady.

Q. In her conduct and conversation? A. Yes, Sir.

Q. Did you ever see anything amiss in her whilst you were at her house? A. No, Sir; and her husband always acted like a perfect gentleman.

Q. Did they, by word or deed, try to impress upon you that their life—that their words and conversation were correct. A. Yes, Sir.

Mr. Evarts—That I object to, what they by word or deed attempted to do.

Judge Neilson—I think the other answer covers the whole ground.

Mr. Fullerton—I have been over the whole ground, and an imputation is cast upon the witness because he went to this place. I would like to show what the place was when he got there, and what the demeanor of the persons was when he got there.

Judge Neilson—That you have a right to ask.

Mr. Evarts—That he has asked. That I didn't object to.

Judge Neilson—Well.

A LETTER OF MR. BEECHER'S TO MRS. TILTON.

Mr. Fullerton—Mr. Tilton, a letter has been introduced in evidence written by Mr. Beecher to Mrs. Tilton subsequent to the publication of the Woodhull slander, and it has no date. Do you remember when that letter was written? A. Yes, Sir; it was written a long while after the slander.

Q. How long? A. Well, I was going to say six months; perhaps that is an over statement. Certainly four or five months.

Q. Do you remember how it happened that it was written so long after the slander? A. Yes, Sir.

Q. State.

Mr. Evarts—If he knows about it being written from what occurred between him and Mr. Beecher, that is evidence, and nothing short of that.

Judge Neilson—What is that, Mr. Evarts?

Mr. Evarts—I say if the witness knows from what occurred between him and Mr. Beecher, then that is an interview which, if not already included in the gentleman's inquiry, can be gone into. There is no other mode of knowledge that affects us.



Judge Neilson [to Mr. Fullerton]—It took place some months afterwards. Don't that cover it?

Mr. Fullerton—Not at all. There was a reason for writing to her; I want to know that reason.

Judge Neilson—Let the witness answer that question in the most general form, what the reason was, without specifying the conversation.

Mr. Evarts—He must be confined to what passed between him and Mr. Beecher. Nothing else binds us.

Judge Neilson—On such a point as that there might be a reason stated, although not in the presence of Mr. Beecher. I will allow the question.

Mr. Evarts—I object to the question, and to any answer short of what passed between Mr. Beecher and the witness.

Judge Neilson—[To the witness.] Answer it very shortly.

The Witness—During the first four or five months after the Woodhull scandal a great many people asked Elizabeth what Mr. Beecher had done about it.

Mr. Evarts—I object to that.

Mr. Fullerton—That is a fact I have a right to show.

Mr. Evarts—I move to strike that out.

Judge Neilson—I will let that stand. It is by way of getting at his reason for his theory.

Mr. Evarts—I think it is objectionable.

Judge Neilson—I will let it stand.

Mr. Evarts—Because the reason can be given, it does not allow under that the introduction of hearsay evidence.

Judge Neilson—He will undertake to relate the reasons, and the first may be the suggestions of other people.

Mr. Evarts—Yes, Sir; and that might relate, on this examination, to something that occurred in conversation between himself and his wife.

Judge Neilson—They don't propose to take that.

Mr. Fullerton—It is a part of the *res gestæ*.

Mr. Evarts—I don't understand that it is. He says a great many people spoke to Elizabeth. That I propose to strike out.

The Witness—He wanted to know how Mr. Beecher wrote this to her, whether he had ever made any expression of sympathy.

Judge Neilson—[To Witness.] That is one reason; don't give her answer.

Mr. Evarts—I move to strike that out.

Judge Neilson—No; I will let that stand.

Mr. Evarts—I except.

Q. How long after those inquiries was this letter of Mr. Beecher's written to her? A. This letter was written to her when those inquiries were being made, and the letter was written for the purpose—

Mr. Evarts—I object to that.

The Witness—of putting into her hands something that she could show to her friends, and that is what Mr. Beecher said.

Mr. Evarts—I object to what the letter was written for, unless it proceeds from Mr. Beecher, as a reason why it was written, and I wish the witness would stop when I object.

Judge Neilson—Bring it within that rule.

Mr. Evarts—I: that struck out?

Judge Neilson—I understand that has been referred to as a statement of Mr. Beecher's.

Mr. Evarts—He has not said. I move that it be struck out.

Judge Neilson [To THE TRIBUNE stenographer.] Read the last answer of the witness.

THE TRIBUNE stenographer read the answer.

Q. When did he say that? A. He didn't say it to me; he said it to Mr. Moulton. I had nothing to do with that letter.

Mr. Evarts [To THE TRIBUNE stenographer]—When was this last part of the answer given? It must have been after my objection.

THE TRIBUNE stenographer—It was.

Mr. Evarts—I move to strike that out.

Judge Neilson—I deny the motion.

Mr. Evarts—Your Honor will be so good as to note my exception.

Mr. Fullerton—Did you carry the letter? A. Yes, Sir.

Q. From Mr. Moulton's house? A. Yes, Sir.

Q. Did Mr. Moulton give it to you? A. Yes, Sir.

Q. There was one question I omitted to ask you in reference to the tripartite agreement. Were you willing to sign the tripartite agreement after you read and became acquainted with the article which referred particularly to you—the original tripartite agreement you had prepared? A. No, Sir, the original draft of the tripartite covenant I refused to sign.

#### MRS. TILTON'S TRIP TO MONTICELLO.

Q. Do you recollect when your wife was at Monticello? A. She was there in the Summer of 1869. I think she was there more Summers than one.

Q. How is that? A. I was just thinking that she was there more Summers than one. I was there with her one Summer; I think she was there two or three years in succession; I know she was there in the Summer of 1869.

Q. Do you recollect what time she was there in 1869? A. She went shortly after the baby was born.

Q. Do you recollect her return, what time it was? A. Yes, Sir; I recollect her return, because I went after her, and she came away, and we crossed each other on the road.

Q. You did start to go for her? A. Yes, Sir; I started to go and make a surprise visit to her, and when I got there I found she had gone.

Q. Did you see this Catherine Carey that was on the stand yesterday? A. I was here yesterday.

Q. And you saw the witness? A. Yes, Sir.

Q. Did you recognize her as a family servant of yourself? A. Yes, Sir.

Q. As a servant that went to Monticello with your wife? A. I have not said that; I don't remember enough about the servants, but I remember that she was a nurse.

Q. In the family? A. Yes, Sir.

Q. Now, Mr. Tilton, in one of your letters that has been put in evidence—I call your attention to "Exhibit D, 98," dated Brooklyn, August 28, 1869:

MY DEAR WIFE—I find myself alone, but hardly lonesome; weary, but not sleepy; restless, but not without peace of soul

to-night, and so I turn my thoughts to you and the children in your mountain nest.

Where was the mountain nest? I suppose it to be Monticello, and that is why I ask the question. A. Yes, Sir; this was a letter which I wrote from home in Brooklyn to Mrs. Tilton at Monticello. The phrase "mountain nest" refers to the mountainous character of the country. Monticello is a village up among the mountains in Sullivan County in this State.

Q. On a very large eminence, is it not? A. Yes, Sir, and very pure air.

Q. [Handing paper to witness.] Look at the paper I now show you and say whose handwriting it is? A. Henry Ward Beecher's.

Q. Say if there is any handwriting upon it in the hand of any other person—you need not state in whose handwriting it is if there is such handwriting? A. Yes, Sir; there is another person's handwriting; the description on the back.

Q. That is on the outside of the last leaf in lead pencil, is it not—page three? A. The words written on the back of page three are not in Mr. Beecher's handwriting.

Q. The words written in lead pencil on the back of page three are not in Mr. Beecher's handwriting? A. Yes, Sir; are not in Mr. Beecher's handwriting.

[Marked for identification. "Exhibit No. 103."]

#### SOME OF MRS. TILTON'S LATER LETTERS PROPOSED.

Q. [Handing paper to witness.] In whose handwriting is the paper I now show you? A. Mrs. Tilton's.

[Marked for identification, "Exhibit No. 104."]

Q. [Handing paper to witness]. Again, in whose handwriting is the paper I show you? A. Mrs. Tilton's all except the lead pencil mark at the back.

[Marked for identification, "Exhibit No. 105."]

Mr. Fullerton—If the Court please, I owe an apology or an explanation to the other side in offering these two letters; I promised to do it before the close of the cross-examination, but the cross-examination was so long that I forgot it.

Mr. Evarts—These last two?

Mr. Fullerton—Yes, Sir; and when we find them, there are some other letters from Monticello which I desire to introduce, to fix more distinctly the time when Mrs. Tilton was there in 1869.

Judge Neilson—[To Mr. Beach.] Mr. Beach, to what date does your book come down to?

Mr. Beach—It comes down to the commencement of the re-direct examination.

Judge Neilson—I cannot help you, then; my book only comes down to 1875; that is as far as my book goes.

Mr. Evarts—Mine goes down to the end of the cross-examination, and the commencement of the re-direct.

Mr. Fullerton—It is in the 19th century yet!

Mr. Beach—I think that satire of *The Herald* is very likely to become a fulfilled prophecy from the present appearance of things.

Mr. Fullerton—[Handing paper to witness.] Look at the paper I now show you and say whether it enables you to state

how late in August your wife was at Monticello in 1869? A. This letter is dated, "Monticello, August 31st."

Q. I didn't ask you the date of it, I asked you if it enables you to state how late in August she was there? A. She must have been there the very last day?

Mr. Evarts—We have asked for that letter of 1874.

Mr. Morris—I cannot find it.

Judge Neilson—Mr. Beach, it seems to me that occurred quite late in the cross-examination, whatever it is.

Mr. Beach—Well, Sir, I will look.

#### A HARD TECHNICAL QUESTION DISCUSSED.

Mr. Evarts—These letters that are now proposed to us, being letters from Mrs. Tilton to her husband, are not letters referring to any letters that have been introduced upon our part, and they are not letters that have been communicated to Mr. Beecher, or in regard to which he has any relation. That is not proposed. And they are of date, one in July, 1871, and the other may be assumed late in 1872, though there is only a memorandum of that date. I suppose that it is considered to be correct. And they are after the alleged cause of complaint on the part of this husband against Mr. Beecher, made the subject of this action, and are not admissible under any rules of evidence, being entirely passages between himself and his wife, and not admissible in the light in which the other passages have been introduced, to wit, of the condition of their family relations before the occurrence.

Judge Neilson—The rule, as I understand, is that in an action of this kind, to show the relation of a family, the domestic happiness or unhappiness, the plaintiff may put in evidence correspondence prior to the alleged event.

Mr. Evarts—Yes, Sir.

Judge Neilson—Or to the knowledge of it.

Mr. Evarts—Or to the knowledge of it.

Judge Neilson—And the other side may put in letters also that would combat the suggestion of a peaceful household. I think the limit is there, as stated in the books—prior to the knowledge of the offense.

Mr. Evarts—It is very well settled, I believe.

Judge Neilson—Isn't it, Mr. Fullerton?

Mr. Fullerton—I think not, Sir; that is subject to some exceptions. They have introduced some letters, I believe, since the event.

Mr. Evarts—Yes, not objected to. That is another matter.

Mr. Fullerton—That forecloses the other side.

Mr. Beach—They did not object to the same character of evidence.

Judge Neilson—You have had subsequent correspondence?

Mr. Fullerton—Certainly. They have introduced a part of it.

Mr. Evarts—That don't foreclose, in the least, our objecting to letters, if they don't object to letters. There never was any rule of evidence of that kind. They may find an advantage by having them in.

Mr. Beach—Certainly.

Mr. Fullerton—Now, this rule, as your Honor has stated it, you will perceive does not apply to the question now before the Court, because the defense in this case have introduced a part



of the correspondence since the alleged cause of complaint. They have done that, and they have exposed themselves to the balance of the correspondence between the parties during that period. It is very plain, Sir, that we are entitled to this correspondence.

Judge Neilson—In view of that, I am inclined to receive the letters, Mr. Evarts.

Mr. Evarts—Why, your Honor, they cannot give the letters in evidence any way. We can give in evidence anything that affects this plaintiff; they can not. Their right to introduce in evidence letters between husband and wife grows out of their right to show relations between them before the invasion or knowledge of the invasion of the domestic purity. That is the only way. On the face of the matter they have no right to give in evidence letters from one to the other, but on the face of the matter we have a right to give in evidence anything that affects this opposite party to us. That is the difficulty. They overlook that fact. General rules of evidence allow us to affect him with letters, as the general rules of evidence allow them to affect Mr. Beecher; but the special rule, on special motive, permits the interchange, between husband and wife, of observed demeanor, or of letters, to be brought in as a part of the domestic, conjugal relation, which may be thus proved. Now, these letters are not within that rule; that seems to be conceded. Then how are they brought in under any general proposition of the law of evidence that enables them to put in evidence letters between their party and a third person? Now, there is nothing in the proposition that because we have given some letters between the year 1870 and 1874, or whenever we have given them. [To Mr. Shearman.] What have we given?

Mr. Shearman—One in 1871.

Mr. Fullerton—Several.

Mr. Morris—1869.

Mr. Evarts—1869 is prior.

Mr. Pryor—The law is not as to knowledge; it is as to the event. There is no authority for it in any book anywhere.

Mr. Evarts—Oh, yes.

Mr. Pryor—Give me an authority.

Judge Neilson—My impression has been that way.

Mr. Pryor—No, Sir, it is not. It is the date of the event.

Mr. Fullerton—Subsequent to the event.

Judge Neilson—The event as it becomes known to the party.

Mr. Pryor—No, Sir.

#### REMARKS OF MR. EVARTS.

Mr. Evarts—Now, let us see if we cannot find an authority. Lord Kenyon says: [Reading from *Edwards vs. Crock*, 4 Esp. 39]:

"In an action of *crim. con.*, letters between the plaintiff and his wife, passing while they were necessarily separated, in the pursuit of their vocations as servants, and written before there was any suspicion of adultery, are admissible to show mutual affection and happiness."

That is the point. The point is how they are going on in their domestic life before the interruption, *per quod consortium amittit*. It is the losing of the companionship that is the action.

Judge Neilson—It is on the question of damages.

Mr. Evarts—That is as it may be.

Judge Neilson—It professes to be as to the principal fact.

Mr. Evarts—I agree, it don't prove the fact. It is the state of their domestic happiness until the discovery of the fact, producing a new situation.

Judge Neilson—Yes, Sir.

Mr. Evarts—That is the *rationale* of it.

Judge Neilson—Now, Mr. Fullerton, let us see why it is admissible.

Mr. Evarts—I was going to say, with certain qualifications. If we had put in a letter to which either of these was an answer, why, that of course would bring it within another rule of evidence, and if my learned friend points that out we will consider it.

#### ARGUMENT OF MR. FULLERTON.

Mr. Fullerton—The rule, as your Honor has stated it, is no doubt correct, that we would have no right then to introduce a correspondence between the husband and the wife, which occurred subsequent to the alleged offense; but the other side had a right to do it, and they have availed themselves of that right, and have given in evidence in this case several letters which passed between Mr. and Mrs. Tilton, subsequently to December, 1870, when this alleged offense was made known to Mr. Beecher, letters of Mrs. Tilton to her husband. Now, what was the object of introducing those letters? Let us look for a moment. It was not to show that husband and wife lived together harmoniously; that was not their object, that was one of the objects which we had in view in introducing the correspondence. They had another, and a further and a deeper object. They wanted to show letters written subsequently to December, 1870, when this offense was made known to Mr. Beecher by Mr. Tilton, for the purpose of convincing this Jury that no woman who had submitted herself to the embraces of a paramour would ever have written such a letter to her husband. That is their object, and when my learned friend on the other side comes to sum up this case to the jury, if this case stands as it does now, he will flout those letters in our faces and say, "There is the evidence that this charge is false, because those are the letters of an innocent woman." Now, Sir, they have tried the experiment and they must reap the fruit of it. Whenever they go into correspondence subsequent to December, 1870, they open the door, and they cannot shut it at their will. We can read correspondence between the parties during that same period for the purpose of combating the position which they intend to take, predicated of the evidence as it stands on their part. Now, Sir, that is the doctrine of this case. Any letter, now, written by Mrs. Tilton to her husband subsequent to December, 1870, we can introduce in evidence in this case, for the purpose of doing away with any inference which they seek to draw from the correspondence given by them which occurred during the same period.

Judge Neilson—Well, that is the point, the very point involved, whether, they having put in some letter which might

possibly admit of a certain interpretation, you have a right to put in other letters to qualify that interpretation.

Mr. Fullerton—They have entered upon a line of investigation here. We can pursue that line of investigation. We can give evidence of the same character and of the same purport, to explain away and get rid of the testimony which they have given of that character. Nothing can be clearer than that. And whenever they try the experiment of coming down since December, 1870, for the purpose of introducing letters between husband and wife, they have opened the door for the whole correspondence between those parties at that time. That is our position.

#### ARGUMENT OF MR BEACH.

Mr. Beach—May I refer you to an authority, Sir, upon that subject, which falls under my eye in Court. If opportunity were given, I have no idea, Sir, but cumulative decisions to the same effect could be given with great readiness. I understand the rule to be that where a party enters upon a line of immaterial or irrelevant evidence, or incompetent evidence, that the opposite party has a right to follow the lead thus given, and to enter upon the same class of evidence. I am not sufficiently familiar, at this moment, with the rule to say whether it is an absolute right upon the part of the opposite party to give that proof—answering proof. Your Honor will perceive that it might lead, under certain circumstances, to a great waste of time if the Court should allow irrelevant evidence to be produced by one party because the other had been permitted to present it, and we may, therefore, qualify the rule to this extent, I think, with propriety, that it is a subject which depends upon the discretion of the Court, to be exercised reasonably and justly, with reference to the subject-matter, and the particular circumstances which are upon the occasion brought to the attention of the Court, and that seems to be the result, Sir, of the expression to be found in *Phillips on Evidence*, where it is said :

The cases do not agree upon the question whether irrelevant testimony, being given on one side for the assumed purpose of proving a fact, will warrant other testimony in reply to that so given, either to repel it directly or touching the fact upon which it professes to bear. The result would seem to be that it is discretionary with the Court to hear or reject the evidence in reply. In many cases, and indeed all, the expense of time must be useless, and may, by consent of parties, be made endless, if the Court have no power to interfere.

Judge Neilson—Is that from the text, or a note ?

Mr. Beach—It is from the note.

Judge Neilson—Is it Edwards's notes, or Cowan's ?

Mr. Beach—It is Cowan's, Sir—Cowan and Hill's. I think it is Edwards's edition. Yes, Sir, it is the additional notes of Mr. Edwards. Now, your Honor will perceive that in the evidence which we offer, which consists only of a letter or two—two or three letters which were inadvertently omitted upon our direct examination—there can be no great waste of the time of the Court. The examination is not likely to proceed to an extent which will be tedious or unfortunate. If this is a question—which is the concession I am disposed to make—dependent upon the discretion of your Honor, it seems to me that the appeal which we make to that discretion must be invincible.

My associate has stated the object of the evidence which they introduced. We, in the freedom of inquiry which we chose to permit upon the other side in regard to the relations existing between this husband and wife, made no objection to this evidence which they offered, assuming it to be irrelevant. We permitted them to give letters from Mrs. Tilton to Mr. Tilton, and the reverse, without objection, the object being that which has been expressed so forcibly by my associate to your Honor. Now, in the exercise of a just discretion, Sir, they having availed themselves of that character of proof, for the purpose, either avowed or obvious, it seems to me it would be harsh and unjust to deny the introduction of the letters from Mrs. Tilton, to a very limited extent, bearing directly upon that question, possessing none of the uncertainties of parol evidence, leading to no injurious waste of the time of this Court, and necessary, Sir, for a proper explanation of the relations between the parties, that being the subject to which their evidence referred. And we appeal to your Honor's discretion, anxious to do justice between these parties, solicitous to ascertain the real truth in regard to these relations, to exercise it in a spirit, Sir, and with an authority which will lead to those results; and I—without enlarging, Sir, pressing motives upon your Honor—I submit that it would be a harsh and extremely unjust exercise of that discretion to permit the gentlemen upon the other side to avail themselves of this character of evidence, and permit us to a very brief extent to answer it by the evidence which we propose.

Mr. Evarts—The question has nothing to do with discretion or irrelevancy. Those topics are as remote from any consideration here, which is the legal right, and the perfectly well established rules of evidence. Now, my learned friends have so often pleased themselves with stating what I am going to say in my summing up, that I am afraid when I come to sum up I shall be anticipated in every point. The question here is whether the evidence now proposed is legal or not. I object to it. It is said that we have put in evidence a letter subsequent in date to the point of discovery alleged by the complaining husband. The Catherine Gaunt letter, as it is called, is the only letter of that kind and of that date that we have put in evidence.

Mr. Beach—You are mistaken, Mr. Evarts.

Mr. Evarts—Show us some others. We have endeavored to find all of them. It is not from want of pains on our part to find out whether there was any other that I make the statement. If you can point us to anything else, correct it. Well, I will assume the Catherine Gaunt letter is the only one.

Mr. Morris—Well, that is a mistake.

Mr. Evarts—What?

Mr. Morris—I am quite certain that is a mistake.

Mr. Evarts—Well, we will get it after recess. It is ten minutes past one, if your Honor please.

Mr. Beach—You mean the only letter subsequent to the discovery?

Mr. Evarts—Subsequent to the discovery. We shall lose our whole recess if we go on in this way.



Judge Neilson—Get ready to retire, gentlemen. The officers will please pass around there and keep the audience quiet.

Mr. Beach—Give us until a quarter after two, please.

Judge Neilson—Yes, Sir. Gentlemen you will return at a quarter past two o'clock.

The Court here took a recess until 2:15.

#### PRINCIPAL ARGUMENT OF MR. BEACH.

The Court met, pursuant to adjournment, at 2:15 p. m.

Mr. Beach—May I be permitted, Sir, to introduce an authority or two upon the question under discussion, before adjournment. It was contended, on the part of the defendant, that evidence of the correspondence between Mr. and Mrs. Tilton, as relating to their domestic intercourse, its character was admissible only after the discovery of the offense charged.

Mr. Pryor—Before.

Mr. Beach—Before the discovery of the offense.

Judge Neilson—Only up to the discovery.

Mr. Beach—Only before the discovery of the offense charged; that is, that the discovery, or, as they say, well-grounded suspicion of the offense, is the point at which the limit of inquiry is fixed. My associate, Mr. Pryor, upon the authority of Mr. Greenleaf, took the position that the evidence was limited to the time of the act of commission, and there are, I think, many reasons to support that proposition. He hands me, Sir, the second of Greenleaf, Section 57 of Part 4. [Reading]:

"The letters of the wife, in order to be admitted in favor of the husband, must have been written before any attempt at adulterous intercourse had been made by the defendant." [Referring, Sir, to the case of *Wilton vs. Webster*, in the 7th of *Carrington and Paine*, at page 198.] "And whenever her letters are introduced as expressive of her feelings they must have been of a period anterior to the existence of any facts tending to raise a suspicion of her misconduct, and when there existed no ground to impute collusion"—

Antecedent, Sir, to the existence of facts not of suspicions, but of facts tending to raise any suspicion of the adulterous intercourse; and your Honor will perceive how fugitive and uncertain would be the limit which should be founded upon the question of the existence of suspicions of adultery, because those suspicions would be varied according to the character of the different persons who might be placed in that situation. Therefore the limit is the fact of adulterous intercourse, or such congenital facts as would lead, tend, to a suspicion of its existence. I think, therefore, it is clear that the proposition of my learned associate is correct. But I do not consider it, Sir, as particularly important upon the question of the admissibility of the proof we now offer, for the reason that they have given evidence on the other side, subsequent to their own established limit, and the precise question before your Honor is whether, as a matter of right, or a matter of discretion, they having given that evidence without objection on our part, which, under the rule which they established, would be inadmissible as irrelevant and incompetent, they can properly object to the introduction of similar evidence, upon our part, in answer to the proof which

they have given. Now, Sir, I refer to the 5th Barbour, at page 516, the case of *Moss vs. Stone*. The syllabus is: "After evidence has been given by the plaintiff in regard to a mortgage without objection" (it is parol evidence, Sir) "and several inquiries in regard to its contents have been made by the defendant, both parties will be considered as having acquiesced in receiving parol evidence of the mortgage, and the defendant cannot then object to the plaintiff's proving at what time the mortgage fell through."

The Court says: "I think the learned justice before whom this cause was tried, at the Circuit, decided correctly in receiving parol evidence to show when the mortgage held by the plaintiff on Dutcher's house became due. The defendant's counsel had previously given some evidence in regard to that mortgage, and this objection was not made until the plaintiff's counsel had also made several inquiries in regard to its contents. The defendant's counsel could not then object to proving the single fact when the mortgage fell due, without also objecting to all the previous evidence of its contents. I think that it must be held that both parties had acquiesced in receiving parol evidence of the mortgage."

Now, that would have been consistent, Sir, under the exception which was taken, only upon the ground that the production of this answer in evidence was either a matter of legal right, or was properly the subject of the exercise of judicial discretion, and in either sense the Court held that it was a proper exercise of power upon the part of the trying Court to admit the proof. And again, Sir, in *Phillips's Evidence*, speaking of this question of answering irrelevant testimony:

"In assumption against several partners, one of them introduced a letter of his copartner to the plaintiff which, it was insisted, made against him. In consequence of this the plaintiff offered to show that the same copartner, in answer to certain interrogatories, had contradicted what he said in his letter"—a parallel case in principle. "This was objected to by the defendant who produced the letter, and it was received. *Held*, no error, as the defendant himself had laid the foundation of it."

Now, see, Sir, this was a case where the one party had asked the other in regard to a declaration made. The Court then received declarations, not at the same time, but upon other occasions, which contradicted the declaration which had been improperly received in evidence without objection. And that is precisely, Sir, the attitude of this question. They have given in evidence a letter, subsequent to December, 1870, for some purpose. The manifest object of the introduction of the letter is to show certain expressions of sympathy and regard upon the part of this witness towards her husband. The letter was offered to show certain relations after the event, and after the revelation of the event, inconsistent entirely with the truth of the alleged event. We are not anticipating the argument of the counsel, Sir; we suppose it will be founded upon the evidence, and that no question which can be raised upon that proof, in favor of his client, will escape the ingenuity and the ability of our learned friend. It would be very difficult, Sir, for any of us upon the part of the plaintiff, or all of us, combined, to anticipate all that the counsel might be able to say upon that subject. We do not pretend to that ability, but we reason, Sir, that from the nature of the evidence, its legitimate and real import is to prove that after the fact of this

adultery was supposed to be ascertained, believed to be ascertained between these parties, that then the relations in their domestic intercourse contradicted the possibility of any such event. Well, now, Sir, that does not depend upon a single isolated and independent declaration which may have been made under influences and sympathies which controlled the expression of the wife upon that particular occasion. But the fact whether or not the intercourse of these parties was inconsistent with the charged adultery is to be traced by the whole course and history of their connection subsequent to that period, incompetent and inadmissible, it is true, Sir, but yet opened by the other side a course of interrogation, pursued on their part, which leads to the one or the other result. Now, Sir, their evidence is substantially in effect a declaration upon the part of Mrs. Tilton, expressions of fondness and affection, if you please, and it is precisely the same as if Mrs. Tilton, being a competent witness, had been placed upon this stand and asked whether, after December, 1870, she had been in the habit, or had, upon that particular occasion, indulged in fondness of expression towards her husband. Suppose she was upon the stand, Sir, making this very declaration contained in this letter, and we had asked her, in pursuit of the real object, what were the truthful relations continuous in your subsequent connection to this event with the plaintiff—what were the continuous relations that existed between you? Have you not at other times been unkind and unsympathetic? Have there not been occurrences between you in your habitual intercourse which were consistent with the alleged adultery with the defendant? Why, most obviously, Sir, that could be shown. It is a cross-examination of the witness whom they produce upon that subject. They produce her by her written declaration; we ask to contradict her by her written declaration made at another time—inconsistent with the exceptional one which they have introduced. Upon what principle would your Honor exclude it, and how else is this letter to be judged except as being a declaration made upon the part of Mrs. Tilton towards the fact which they seek to establish of friendly and affectionate relations between herself and her husband after this event. It is not enough, Sir, to prove that upon a single occasion she made these expressions of affection and manifested continued love for Mr. Tilton, and that they were met upon that particular occasion with responding expressions. The question reaches continuously and further than a single point of observation. We are to view their whole relations subsequent to the charged adultery; we are to see whether in their consistent and habitual intercourse there was no alienation, no cessation of these attentions and these expressions of love and reverence which should have been maintained in the family, the fact of the adultery being absent. But, Sir, if this question, as I said to your Honor, is to be considered as a mere question of discretion, not as a matter of legal right, I submit to you, then, that in the exercise of a proper discretion with a view to the truth and the justice of this inquiry, with reference to the ascertainment of the fact whether the relations between these parties were of a character indicated by this single letter which they introduced, we offer

to prove near the same time another letter from this lady containing a declaration of a certain character which will have its proper effect, either sustaining or modifying that contained in the letter which they have introduced. I did not pursue, Sir, perhaps, sufficiently far the quotations from Mr. Phillips:

“So, though character be not in issue, if the party introduce evidence to support his character, held that for that reason the other party might give evidence in reply.”

It was incompetent evidence, yet the one party had introduced it, and the Court held that evidence in reply was therefore admissible; and it would be a strange doctrine, Sir, whether it is done by consent or under objection, if one party can give evidence of a particular character tending to establish a prominent and important issue in the case, that the other party might not give evidence of the same kind. Whether it be legal evidence or not is immaterial, Sir. The fact which they seek to establish by this letter is an important and controlling fact in the consideration of this case, one which tends to reflect considerable light I admit, upon the question of the charged adultery, and evidence is given upon it. I say, without endeavoring to anticipate the counsel, they will reason to the jury that this letter of Mrs. Tilton, this act, this expressed conduct upon her part, is utterly inconsistent with the idea that she could have been a criminal or a debased woman. And you allow that, if this evidence is excluded, to stand upon the single proof of a single event without giving to us the privilege of exposing the fallacy of that argument, or producing other declarations from the same lady in regard to the same subject matter, and which may, to a greater or less extent, modify the effect of the proof they have offered.

“Where the plaintiffs offer any evidence of the credibility of one of their witnesses, the defendants were allowed to ask another, if the plaintiff's witness had not been guilty of larceny—”

Not upon precisely the same subject, Sir.

“The testimony,” say the Court, “on both sides was illegal, and as the plaintiff resorted to that mode in support of credibility, held, that they could not complain that it was rebutted in the same way.”

I could read you some of the numerous examples of the same character, from this authority, and I submit therefore, if your Honor please, that as a matter of right this evidence is admissible, but at least that as a matter of discretion it is a duty of this Court, as affirmed by these repeated authorities, to permit the evidence which is now offered; and I add, Sir, simply that the objection to the exercise of the discretion in that direction made from the inconvenience of allowing extended, prolonged examinations by parole upon irrelevant questions as tending to the disturbance of the order and the interruptions of the business of the Court, cannot apply here. We ask for no parole evidence on the subject. We simply produce a couple of letters written by the same hand, originated in the same mind and heart, expressive of feelings and thoughts upon the same subject. And upon what principle of justice these should be excluded, while the other is permitted to stand in evidence as against this plaintiff, I am at a loss to conceive.



## ANSWERING ARGUMENT OF MR. EVARTS.

Mr. Evarts—I cannot think, if your Honor please, that every simple question in the law of evidence proposed for your solution demands very long inquiry. Whatever should induce length or variety of proposition concerning it must be to withdraw from the rule of decision, and not to aid your Honor in it. The primary rule of evidence allows us, as it has allowed the plaintiff in the progress of this case, to introduce written acts proceeding from either party as the opposite party had occasion. They also permitted either party to show the reception by the other party of communications through third persons, and thereby to impute, either by affirmative connected evidence or by such conclusions as the law would draw from the reception without response, such consequences as came to the opposite party from thus receiving letters from third persons. The rule about husband and wife's intercourse anterior to the point of suspicion or discovery, is wholly aside from that question. It terminates undoubtedly as by a very well considered opinion, in the Courts of Kings Bench, the full bench, is settled, as upon the common sense of the matter, it would terminate, upon the occasion of interruption, not by a concealed adultery—that had not interrupted but by the suspicion or disclosure as the case may be of an actual or a suspected, though not an actual adultery.

Mr. Beach Well, you give me the reference, Sir.

Mr. Evarts—The case of *Trelawney vs. Coleman*, in the first of *Barnwell and Adolphus*, by Lord Ellenborough and Justices Abbott, Bayle and Holroyd :

“*Held*, that since what the husband and wife say to each other and how they conduct themselves toward each other when together, is admissible in the action of *crim. con.*, it follows that letters written to each other during absence are also admissible to show their manner of conducting themselves toward each other, if all suspicions of collusion are removed, and it is sufficient on this point if the letters are proved to have been written at the time they bore date, and before any suspicion was entertained of the wife's misconduct.”

Mr. Beach—That case is cited Sir, in *Greenleaf* in the paragraph which I read in support of my position.

Mr. Evarts—Now, the English case referred to by my learned friend upon this point was a case at *Nisi Prius* before Justice Coleridge and has not the authority of this that I have cited. And now this letter which we have given in evidence subsequent to this date of suspicion disclosed or excited, is the Catherine Gaunt letter, as it is called. The plaintiff put in evidence a letter dated December 6, 1866, referring to this novel of “*Griffith Gaunt*” and another letter, I think, having the same reference of December 7, 1866. Perhaps both are not in, the first one is. Now, we undertake to examine in reference to this matter of the Griffith Gaunt letter, first, in connection with a disclosure concerning that letter which was contained in Mrs. Woodhull's publication in her newspaper, it being a part of that line of inquiry followed by me and not yet exhausted, by which the responsibility for these disclosures was sought to be charged upon the plaintiff and Mr. Moulton, and they deprived of the credit of having endeavored to suppress

then. In that connection the Catherine Gaunt letter plays this part. [Reading] :

Q. Now, Sir, do you know how Mrs. Woodhull got her reference, in her article, to the Catherine Gaunt letter, as it is called, which your wife wrote you? A. I don't know what reference you allude to.

Q. If there is such a reference do you know where she got it? Then he goes on and finally is asked :

Then, as far as you know, if there is a reference in the Woodhull publication to the Catherine Gaunt letter of your wife, you don't know how she became possessed of the fact that there was such a letter? A. Why, except that she became possessed of it as she got possessed of the other particulars, through circumstances floating to her ear through other persons ; did not get them from me.

Q. And thus floating, they must have originally started from your references to the Catherine Gaunt letter? A. Anything that anybody knew of the Catherine Gaunt letter must have come originally from me, because that letter was written to me; Yes, Sir.

Q. That is exactly what I want to know—my question: then his answer,

But I did not state it to Mrs. Woodhull.

Then this witness, having published the Catherine Gaunt letter, published it not in a complete form. I then introduce it as a part of positive proof in that connection, and with that intent. “Please look at that letter and say if that is the Catherine Gaunt letter, so-called?”—it being a printed page. “What is that?” Mr. Fullerton says, I offered it in connection with his publication of it in an imperfect form, and I put it in evidence to prove that fact of its imperfect condition as compared with his publication of it. And having gone into that inquiry, which your Honor will remember, with what effect or what result in that connection it is not important for me now to consider (that will be reserved for my comments upon the evidence when the evidence is properly completed), then I put in, on the 9th of February, the Catherine Gaunt letter, calling attention in putting it into the differences between it as produced, in its actual condition, and that in which it had been published by the witness. I examined him concerning that, and they put in afterwards, I think, the section of his sworn statement. [Some suggestion to Mr. Evarts by Mr. Abbott.] Oh, yes; they did not take up the Gaunt letter. It was the other letter. They did not put that in: they put in a certain section referring to the 3d of February letters. Now, that letter having been thus introduced, upon the strictest and directest rules of evidence on our part of showing a letter received by him from his wife, and dealt with by him in a certain manner of dealing with a publication or argument or defense of his case, it is claimed that there is opened to them a right to put in evidence letters between the wife and and himself irrespective of any connection with or allusion to the Catherine Gaunt letter, or in connection with it, on the ground that, as one letter has been put in by me, which I had a right, if you please—having a right, if you please, to put in all that I connect with him by his dealing with them—that that gives them a right to put in letters of his received by him from his wife with which the defendant, whom I represent, has no relation of notice or information concerning the letter; and thus the imputation

upon this party whom I represent, failing to give any credit to it as evidence against us. Now, if that is not as profound a contempt of the distinction between the laws of evidence that do not permit people to introduce transactions of their own and on their side, although the other side can do so, and although the other side has done so, I cannot understand the propositions that are submitted in the text-books, or in the authorities, or that are argued in a court! Now, the only point by which connected letters come in is thus—Where letters and correspondence between the plaintiff and defendant were offered in evidence by the former, it was held that the latter might read his answer to the plaintiff's last letter, dated the day previous. And where one party produces the letter of another, purporting to be in reply to a previous letter from himself, he is bound to call for and put in the letter to which it was an answer as part of his own evidence.

That is, that, there being brought in one letter, then the letter which it alludes to, as a letter to which it replies and thus makes it a part of itself, may be required then to be put in as a part of the evidence of the party offering the first letter. But, aside from that, there is a right on the part of the opposite party to put in a letter that is a reply to a letter that has been put in. That is, it follows that. Now, if your Honor please, no argument and no restatement could make that plainer as it seems to me, and as I can only follow my own instructions in any views that I present to your Honor, I despair of making that plain if it does not so strike your experienced attention. Now, my friend, departing from any proposition of right, (for I need not say that all sorts of conversations might be given in evidence) confidential communications between these parties might be given in evidence if this can be given in evidence. Now, my friend departs from that and undertakes to appeal to what he considers a discretion of your Honor. Well, if your Honor please, what discretion is there to invade a rule of evidence to a small extent and not to a large one. That is not the proposition. He must then lay it down as a proposition of law that a party has a right to give in evidence correspondence between himself and a third party with which the opposing party to the suit is not connected in any way, either by writing, or receiving, or hearing, or knowing of, if the Judge thinks best in the interests of justice. Now, my learned friend can find no such proposition of law as that. But I apprehend there is the least possible basis for an appeal in the interest of fairness or justice and of right, when it is proposed to your Honor in the trial of a case, where this lady's mouth is closed by the law, and no word of explanation, no word of suggestion of facts, no word of suggestion of the modes and occasion and circumstances in which a letter as written (a privilege so largely availed of by this witness in explanation of his letters) when no, no such word can be heard from this woman, but before her shearers she must be dumb to allow her husband and his counsel to pick out such letters as they like to read and omit the rest.

Judge Neilson—Mr. Fullerton, do you find the subsequent letter as well as the Griffith Gaunt letter?

Mr. Fullerton—How, Sir?

Judge Neilson—Do you find any letter of later date, besides the Griffith Gaunt letter?

Mr. Fullerton—No later than the Griffith Gaunt, Sir, June 29, 1871; but there are eleven written since.

Judge Neilson—Since the alleged event?

Mr. Fullerton—Since the alleged event.

Mr. Evarts—Not introduced by us?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Oh! Since the event?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Oh! well, we have disposed of that question.

Mr. Morris—No; that question has not been disposed of.

Mr. Evarts—Well, I suppose it is disposed of.

Mr. Fullerton—Well, don't scold about it.

Mr. Evarts—Why not.

Mr. Fullerton—Because there is no necessity for it.

Mr. Evarts—Well, now, let me know what you are saying. Do you find any letter put in by us subsequent to the discovery of the adultery?

Judge Neilson—That is the question I put to counsel.

Mr. Fullerton—That is the question I answered before the gentleman put his question in that extraordinary manner.

Judge Neilson—I know; you answered it according to your general recollection.

Mr. Fullerton—I answered it according to my specific recollection.

Mr. Morris—They put in two subsequent to the discovery.

Mr. Fullerton—Yes, March 18, 1871, and there is one June 25, 1871, and the other nine or ten letters are of an anterior date, but subsequent to the discovery of the event, the cause of complaint.

Mr. Evarts—Well, let us see them.

Mr. Fullerton—I have drawn off a list of them.

Mr. Shearman—It is a mere mistake in the book, if your Honor please, a mere misprint in the pamphlet. The original letter is dated March, 1867. The counsel is taking advantage of a misprint in this pamphlet.

Mr. Morris—I have not taken advantage of any misprint in any pamphlet. I have taken it from the Exhibit; that is what I have taken it from.

Judge Neilson—The remark, Mr. Shearman, applies to one letter only.

Mr. Fullerton—I take it it is a misprint, myself, but to say that we took advantage of it is to say a very unkind and uncalled for thing. The Catherine Gaunt letter is June 29, 1871. There is no dispute about that.

Mr. Morris—It is printed here in the Exhibit as March, 1871.

Mr. Fullerton—Well, it is wrong; it is March, 1863; that is so, and the letter which we offer in evidence only differs three days in the date from the Griffith Gaunt letter, written from the same place.

Judge Neilson—Written from the same place?

Mr. Fullerton—Written from the same place, three days intervening between the two.

Judge Neilson—How about the second letter? That is, the first letter.



Mr. Fullerton—No, Sir, there is but one. There is a misprint in the book.

Judge Neilson—No, but the letter that you offered?

Mr. Evarts—You offered two.

Mr. Fullerton—We offered two; yes, Sir.

Judge Neilson—How remote are those dates?

Mr. Fullerton—The other has no date, Sir, which is a part of the letter. There is a date put upon it in lead pencil. We suppose it was written in December, 1872, and shall be able to prove that it was thus written. The other is July 4, 1871, and the Griffith Gaunt letter is June 29, 1871.

Judge Neilson—A difference of a few days.

Mr. Fullerton—Only a few days.

#### THE COURT ADMITS THE LETTERS.

Judge Neilson—These letters are not, in my judgment, as important as counsel seem to consider them. They do not go to the actual question before us, but it has to do with the question of damages simply, in this sense, as revealing the condition of the relations between the husband and wife in their peaceful abode, happy abode, or otherwise. Correspondence of this kind is admitted for that purpose. If the plaintiff has a blissful home, the law supposes that he suffers more damages by an event of this kind, if it occurs, than he would suffer if he had a disturbed home, broken up by want of affection and love, independently of the offense charged. As to Mrs. Tilton herself, she has no interest in this matter. It is no hardship that she is not heard to explain the letters, and I never have been able to see the force of any suggestion of that character. The question is between this plaintiff and this defendant. This comes in, if at all, on a collateral branch simply—the condition of the household; and all things considered, I am disposed to receive the letters in evidence.

Mr. Evarts—I think your Honor will allow me to say that we do not introduce the Catherine Gaunt letter on that view, in the least, nor does it bear on that question in the least, but it does bear upon the very material issues in connection with which we introduced it.

Judge Neilson—It performs an office in that relation, however.

Mr. Evarts—And in regard to what I have suggested about the hardships. I understood your Honor to hold very liberally in the right of the witness to explain his letters, and that it would not be right to exclude him.

Judge Neilson—So I should hold with another witness.

Mr. Evarts—I say so, and therefore the reason.

Judge Neilson—The import of that rule does not at all depend upon what some other witness might do if that witness should be called.

Mr. Beach—Are we to open another discussion on that subject, Sir?

Mr. Evarts—No; not by me; not by me, it won't be opened.

Mr. Beach—It seems to me that is what you are endeavoring to do.

Mr. Evarts—Does your Honor admit both of these letters?

Judge Neilson—Yes, Sir.

Mr. Evarts—Does the ruling cover the entire space of time? Judge Neilson—What space does it cover, Sir?

Mr. Evarts—This is up to the end of 1872.

Mr. Fullerton—I will reserve that one. I offer the other one.

Judge Neilson—Then the ruling applies to the one letter.

Mr. Evarts—Your Honor will be good enough to note my exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton [reading]:

#### MRS. TILTON'S LETTER OF CONTRITION.

JULY 4, 1871.

MY DEAR THEODORE: I had expected you all day yesterday and to-day, but now your letter was put into my hand instead. I feel the bitterest disappointment, but we are both in God's hands, and while I now hear him say, by my heart's intense yearnings, "Return to the love of your youth," oh, my dear husband, may you not need the further discipline by being misled by a good woman as I have been by a good man. I rejoice in your happy face and peaceful mind, though I am not in any wise the cause. It will be God's gift alone if ever your face illumines or heart throbs with thoughts of me. As for me, I will wait on the Lord. I thank you for the sufferings of the past year. You have been my deliverer.

Destroy my letters, nor show them to our mutual friend. The fear of this will prevent my writing my inmost self.

I am your dear wife,

ELIZABETH.

[Marked "Exhibit, 106."]

Mr. Fullerton—I now offer the other letter.

Judge Neilson—What is the date of that?

Mr. Fullerton—I shall have to prove it.

Judge Neilson—Very well, prove it.

Mr. Fullerton—Look at the paper now shown you, and which is marked for identification, and tell me when it was written and from where it was written. [Handing witness the letter.]

Judge Neilson—The last letter was written from the same place as the Griffith Gaunt letter?

Mr. Fullerton—Yes, Sir.

Judge Neilson—Well, go on.

Mr. Evarts—The inquiry is only of the date, I suppose.

Judge Neilson—The date.

Mr. Fullerton—When was the letter written, and from where was it written? A. It was written, I presume, at my own house, December 28, 1872. At all events it was written on the morning after, or the day after, the publication of the letter to the Complaining Friend in *The Brooklyn Eagle*.

Q. Where were you when you received it? A. I was at my house. It was laid on my desk.

Mr. Fullerton—[Reading:] "My dear Theodore—"

Mr. Evarts—Wait one moment.

Judge Neilson—Now, that letter takes a different relation altogether. It is not a letter intended to reveal the actual condition of the household or the relations existing between the husband and the wife—

Mr. Beach—Oh, well, we will withdraw that; it is of no particular consequence.

Judge Neilson—[Continuing:] But is moved by a single special circumstance, to wit: the letter itself.

Mr. Fullerton—We will withdraw it.

Judge Neilson—Go on.

Mr. Fullerton—We are through, Mr. Evarts.

RE-CROSS-EXAMINATION OF MR. TILTON.

Mr. Evarts—Mr. Tilton, you were to have brought me a letter from Mr. Johnson to you upon your giving him a gold watch? A. Well, Sir; I have forgotten that circumstance. I will be happy to oblige you.

Q. You were also to get for me the date of your Northfield lecture engagement, in Minnesota. A. Well, Sir, I applied to my lecture agent and he informed me that it took place so long ago that it was before his association with me. Therefore I have no means of ascertaining it.

Q. When did his association with you begin? A. I think, Sir, in the season of 1868-'9.

Q. Then it was prior to 1868-'9? A. It must have been, according to that statement; yes, Sir.

MR. TILTON ON THE LAWS OF DIVORCE.

Q. Mr. Tilton, you have given us your views of legal reform in regard to divorce. Were you aware that the State of New-York had provisions of law for a limited divorce, for a variety of causes, for uncomfortable or improper relations between husband and wife? A. Not actual divorce, Sir.

Q. I said limited divorce? A. I don't know of any such thing as limited divorce. There is separation. Articles of separation can be had.

Q. Very well. Were you aware of the regulations of our laws for desertion, cruelty, &c., in separating the parties, except from the obligation of their vow, so that they could not marry again? A. I am quite well aware, Sir, that here parties can be separated for various reasons, but they cannot be divorced, except for one reason.

Q. Well, do you know the difference between a limited and a divorce *a vinculo*? A. Yes, Sir.

Q. Very well. Now were you aware of the conditions of our laws which limited a divorce *a vinculo* to a case of adultery, and gave a divorce, separation, limited, protecting the wife in other cases? A. Yes, Sir.

Q. Very well. Now, Sir, was the State of Indiana one of those parts of the country where you thought light and liberality on the subject of divorce needed to be promulgated? A. Will you be kind enough to ask that question again, Sir?

Q. It will be read to you.

[THE TRIBUNE stenographer read the question.]

A. Well, I have not got that yet into my mind, Mr. Evarts.

Q. Well, Sir, we will wait for you to turn it over in your mind.

Mr. Fullerton—Well, Mr. Evarts better get it out of his first properly, because I don't understand what it means.

The Witness—I desire to answer your questions in good faith, Mr. Evarts.

Mr. Fullerton—I don't understand the point of the question. It may be my fault.

The Witness—But I am under oath, and I cannot answer unless I understand the inquiry.

Mr. Evarts—Well, I think it is very intelligible.

The Witness—It may be my fault, Sir.

Mr. Evarts—The question has been read, I think, to the witness. I think it is very intelligible.

The Witness—[To the stenographer.] Will you be kind enough to read the question, Sir.

[THE TRIBUNE stenographer read the question.]

The Witness—Well, Sir, I cannot say that I understand your question. I suppose that there is no State in the Union nor is there any part of the world where a public discussion affecting the interests of society is not pertinent and in order.

Q. I thought I understood you to say that it was the differences between the law of New-York and that of the New-England States, and of the West, that constituted your interest and your doctrines on the subject of divorce. A. That was exactly it, Sir.

Q. Did you think, then, that the State of Indiana was one of the places where the presentation of your complaints against the laws of New-York, and preference of the laws of the West, were required as a matter of public reform? A. Well, Sir; I cannot speak for the State of Indiana. I still do not understand your question, Sir.

Q. Very well. That is a difficulty we cannot correct. A. Yes, Sir.

Q. Did you write and deliver a lecture on the subject of divorce and marriage, and promulgate it during a Western tour? A. No, Sir; I made the notes of a discourse on that subject, which I gave in this State, and as it attracted a number of comments, I was requested at various points during my Western tour to express my views. Where I was requested to do, I did it. I did not thrust my lecture upon anybody.

Q. What places in New-York State did you deliver that lecture? A. Cornell University, by the invitation of the authorities.

Q. Anywhere else? A. Well, I should have to look at a list. Yes, I think a number of places.

Q. Well, just tell us where. A. I cannot say.

Q. You cannot remember any place but that? A. Not at this moment. I remember that I opened the lecture course there by invitation of the college students, and as I had been very much traduced for supposed laxity of views, chose that subject.

Q. I didn't ask you that. I only asked you where did you deliver it? nothing else. Now, Sir, did you deliver that at Bloomington in Indiana? A. I did, Sir; that is to say, I delivered a discourse there.

Q. Before a seminary there—university? A. Before the university; yes, Sir.

Q. Did you in that lecture announce this proposition: "If any two among them promised each other enduring love, they were in fact as much man and wife in the eye of Heaven as if the sanction of the law and the benediction of the priest had pronounced them so?" A. I did not, Sir.

Q. Did you in your lecture tell your hearers—it is at Bloomington, I am now speaking of—"to follow nature, and obey her instincts?" A. There is no such phrase in my lecture, Sir.

Q. No sentiment of that kind? A. Nothing of the kind, Sir; no Sir.

Q. Did you in that lecture denounce the interference of either Church or State with marriage? A. I did not, Sir. I criticised



certain relations on the part of Church and State to divorce, not to marriage.

Q. Did you in that lecture say, and in this connection of the subject of your lecture, divorce and marriage, that if you had your way you would crush the Church and crush the State? A. I did not, Sir.

Q. Did you, as a part of this lecture, say that in this free and unrestrained commerce between the sexes, there might be a good many babies born into the world that would have to be taken care of by the State? A. I did not, Sir.

Q. And that it would be the duty of the State to regulate prostitution? A. No, Sir.

#### MR. TILTON'S DOCTRINES OF MORALITY AND THEOLOGY.

Q. Now, you have stated, Mr. Tilton, in reference to some expressions of your correspondence, classified in the questions put to you, that your early religious education produced a resonance and echo in your mind that would account for these expressions of self-depreciation or of gloom. You remember that inquiry? A. Yes, Sir.

Q. Now, Sir, have you not also, as a part of this early education, been taught a strict morality? A. Yes, Sir.

Q. As well as these severe doctrines of theology? A. I had, Sir.

Q. You gave as one instance that you would rather have cut off your hand than have written a letter on Sunday, something of that kind? A. In the early days; yes, Sir.

Q. Now, before the dates of these letters you had very thoroughly got over that feeling regarding the sanctity of the Sabbath, had you not? A. Yes, Sir; no, not the sanctity of the Sabbath; the severe rigidity of moral duty.

Q. Well, those feelings regarding the sanctity of the Sabbath that you referred to, was my question? A. Well, I joined Plymouth Church in 1853, and an entirely new system of religious thought was there taught to me.

Q. Now, I only asked you a single question, whether you had got over these notions that you then referred to, and gave an instance of—if you had got over those views at the time you wrote the letter that you were inquired of. A. Mr. Evarts, I have not entirely got over those views yet, and when I spoke the other day of some words which you have appeared just now to have quoted, namely, the resonance and reverberation of the old views in my mind, they are the signs and tokens that they still linger with me. I have never been able to throw them off entirely.

Q. Now, Sir, what effect upon your feelings and their expression in the phrases of degradation and reproach which you use in these letters, would be produced by a reverberation of your early teachings, if your conduct had not changed on those subjects? A. I don't know that my conduct has changed on those subjects; it was the spontaneous impulse of a man brought up, as I was brought up in the early years, to confess myself before God abjectly and wretchedly a sinner, though I departed afterwards, under the teachings of Plymouth Church, from that view of human nature, as under the rod and discipline of the Divine; still, in all hours of weakness and wear-

ness, the early views came back, and the dreadful standard came down, and I am beaten with a rod, and crushed again into the earth.

Q. You think, then, that on the other occasions to which these letters that are in evidence here refer to, that these expressions connect themselves only with these early doctrines of original sin, and the five points of Calvinism, do you, and not your own conduct, referred to in these letters? A. No, Mr. Evarts, every one of these letters refer to my own conduct as falling short of the standard of conduct which God reveals to a man, and which all men should follow, namely unselfishness, kindness, diligence to the wants of others, tender-heartedness, freedom from malice; whenever I compared myself with this standard, and remembered my early education, and the scourge which old Dr. Alexander used to put upon us to do our best, I was always ashamed of myself; I think every honest man is.

Q. Then you think that the recurrence of this religious education, operating upon your mind, was applied by you in your letters to your actual conduct, as it was presented to your recollection? A. Yes, Sir. For instance, Mr. Evarts, if you will allow me to give you an illustration.

#### MR. BOWEN'S PAYMENT TO MR. TILTON.

Mr. Evarts—No matter about an instance; I don't want any illustration. You have stated, in answer to a direct question, that the payment of the \$7,000 had nothing to do with the tripartite agreement? A. Nothing at all.

Q. And that was paid you, I think you said, before you signed? A. Yes, Sir.

Q. What day did you sign? A. I don't remember the day, but it was two or three days afterwards—two or three days after the payment. The \$7,000 was paid to me in the form of a check by Mr. Bowen on the very night of the arbitration.

Q. The 2d of April? A. If it was the 2d of April—I don't know the date of that arbitration other than as it has been generally accepted to be such; yet, I have no means of identifying that day. It has been said in Court to be April, 1872; whether it is so or not, I cannot say.

Q. [Handing check to witness.] Now, Sir, will you look at that and see whether it is the check you received? A. That is the check, Sir.

Q. What is the date of it? A. April 4th. I carried it to Franklin Woodruff, and he scolded me for not being earlier. He said I never would be a rich man because I allowed the pennies to go to waste. He said I had lost a day's interest on a large check.

Q. If it was deposited on the 5th you didn't lose much time, if it was dated on the evening of the 4th? A. I did not say it was dated on the evening of the 4th—dated on the evening of the 2d.

Q. The check speaks for itself as to its date? A. It was deposited with Woodruff & Robinson on the 4th of April, as you see by the account.

Mr. Evarts—That I understand.

The Witness—Mr. Woodruff made a remark to me about my losing a day's interest—about my being careless.

[Check marked "Exhibit D, 108."]

Mr. Evarts—Now, I read the check. [Reading]:

NEW-YORK, April 4th, 1872.

Pay to the order of Theodore Tilton seven thousand dollars.

(\$7,000) HENRY C. BOWEN.

(Indorsed:) Pay to the order of Woodruff and Robinson.  
THEODORE TILTON. WOODRUFF AND ROBINSON.

Q. Now, you say you entertained no doubt that Mr. Bowen owed you \$7,000? A. I have said that over and over again. Mr. Bowen owed me the \$7,000, and paid me because he owed me, and for no other reason.

Mr. Evarts—I ask to have all the answer struck out that is not responsive to my question.

Judge Neilson—Well.

Q. Now, Sir, did you think that you were entitled to these damages if Mr. Bowen had a justifiable cause for dismissing you from his employment? A. Mr. Bowen had no justifiable cause.

Q. Just answer my question. A. What is your question?

Mr. Evarts—I ask to strike out that answer. [To the witness.] My question is a very simple one. Did you think that Mr. Bowen owed you these damages if he had a justifiable cause for dismissing you from his employment?

Mr. Beach—Wait one moment. That calls for what he thought at that time.

Mr. Evarts—Yes, Sir.

Mr. Beach—The witness said he had no justifiable cause.

Mr. Evarts—That has nothing to do with it.

Mr. Beach—Yes, it has, because he could not think it if he had not.

Judge Neilson—He might have thought he was mistaken. I think he may answer the question.

Mr. Beach—Then he is asked for his judgment.

Mr. Evarts—I have asked for his judgment, whether Mr. Bowen owed him the money.

Judge Neilson—I think he can answer it.

Q. Did you think that Mr. Bowen owed you these damages, if he had a justifiable cause for dismissing you from his employment? A. No such thought ever arose in my mind, there being no basis to found it on. I never heard such an idea suggested until just now by your own lips.

Q. You never heard, then, from Mr. Bowen a discussion concerning the stories that he had heard to your prejudice anterior to the breaking up of the contracts? A. I never had a word with Mr. Bowen on the subject except in the interview of December 26, 1870. I never saw Mr. Bowen after that time until April 2d or 3d, whatever may be the date, of 1872.

Mr. Evarts—That I understand.

The Witness—And I have never seen him since, except in the most casual way on the ferry-boat.

Q. You did see him on the 26th? A. Four years ago; yes, Sir.

Q. And that interview has been detailed? A. Yes, Sir.

Q. Now, Sir, have you not stated that the subject of stories against you was present and discussed between you and Mr. Bowen? A. Yes, Sir; I have stated that most distinctly.

Q. Very well, that is enough of that. A. Yes, Sir.

Q. And that you held that interview upon the suggestion of your friend Johnson, that it would be useful to you to do so?

A. No, Sir. I stated that I held it at my own impulse. I heard Mr. Bowen had received some stories from some one; Mr. Johnson brought me that information, and I said I would see Mr. Bowen at once.

#### THE COMMUNE AGAIN.

Q. Now, Sir, when did the Commune of France come to an end? A. That is a point of history which I would not like to pluck out of my memory and hand it over to you. I should have to refer to the cotemporaneous history of the times. It went down in blood.

Q. It was sometime antecedent to this procession of yours in which you took part? A. Why, it went down a long while ago. The Commune, considered as a mere political organization, a mere shell, lasted only a little while.

Q. It had come to an end before this procession in which you took a part? A. Why, I think it was a long while before; yes, Sir.

Q. It didn't last very long any way, did it? A. No, Sir, the mere exterior organization. The principles which animated it, and the theory, they will live as long as Thomas Jefferson's system of American Republicanism will live.

Mr. Evarts—Very likely; and the principles you announced here to-day had an origin before Thomas Jefferson.

The Witness—I think they had.

#### MR. TILTON'S COMPANION AT WINSTED.

Mr. Evarts—And will last a great while, I dare say. [To the witness.] Now, Sir, you have been asked in regard to this young person that went to Winsted. Do you know how old that young lady was? A. No, Sir; I stated this morning that she was a school girl, at that time I should say 16 or 17 years old.

Q. You spoke of her in your letter that was read as a mere child? A. Well, that was years ago—that was 1868.

Q. I have nothing to say about it, and only call your attention to it. A. I don't know how old she was. She was a friend and companion of my daughter Florence. I don't know whether they were of equal age, or not. I think she was older, perhaps several years older.

Q. Don't you know, or can you not say, upon consideration that she was as much as 19 years old? A. I don't know, Sir, at all.

Q. Was she not a large person? A. Not very large.

Q. She was not diminutive? A. No, Sir.

Q. She was a fair-sized girl, neither large nor small.

#### MRS. WOODHULL'S HUSBAND.

Q. You have said on your visits to Mrs. Woodhull's her husband was present. Do you mean by that a gentleman called Col. Blood in the evidence? A. Yes, Sir.

#### MRS. TILTON'S PHOTOGRAPHS.

Q. Now, Mr. Tilton, you have spoken about the closet you found in your house with a variety of things in it. Do you know how many portraits there were of other persons?



what were in that closet? A. There was no portrait of anybody else.

Q. In the way of photographs? A. No portraits of anybody else at all.

Q. Do you know how many there were in the bureau drawer of that room of other persons? A. There were not any.

Q. Did you send away from your house a quantity of portraits in photographs of other persons? A. No, Sir.

Q. Afterwards? A. No, Sir.

Q. Did you send them to your wife? A. I did not.

Q. Well, were they sent from that house, do you know? A. Not that I know of. I never heard of any such thing.

Q. Don't you know there were altogether some seventy or eighty photographs of persons—I don't say of so many different persons, but of persons other than Mr. Beecher—that were in your wife's possession there? A. No, Sir; I never heard of any such thing. I have got a little recollection of my own of photographic cards of distinguished people, perhaps a hundred and fifty. They didn't belong to her; they belonged to me; but so far as I know they are still in the house.

Q. Didn't Mrs. Tilton have seven or eight photographs of the Rev. Dr. Taylor, in New-York? A. I never saw them if she had.

Q. Hadn't she several of Mr. Greeley? A. I never saw them.

Q. Had she not quite a number of Rev. Dr. Storrs? A. I never saw them.

Q. Now, Sir, did you give her any of these photographs of Mr. Beecher? A. No, Sir; never one.

Q. Did you never give her a photograph of Mr. Beecher? A. No, not that I remember.

Q. Are you quite sure that you never did? A. I don't remember that I ever had one. Mr. Beecher once gave me a large photograph of himself that hung on the wall, eight or ten years ago. I don't remember any other photograph.

Q. And in the whole course of your friendship with Mr. Beecher you never had a photograph of his own except this one you now refer to? A. I don't remember about the early years; I think quite likely I may have had photographs in those days.

Q. Do you remember whether during those years of friendship you gave any photograph of Mr. Beecher to your wife? A. No, Sir, I do not.

Q. You may have done so? A. Oh! I gave her everything I got. If I had it, quite likely I gave it to her.

Q. Did you have any considerable number of Mr. Beecher's photographs yourself? A. No, Sir.

Q. From which you gave to other persons? A. No, Sir; not that I remember.

Q. Not that you remember. Then I want to know whether you will say that you never had them? A. I think I never had.

Q. And never gave photographs of Mr. Beecher to other friends of yours? A. Well, Sir, I don't remember; I may have done so years and years ago.

Q. Nothing more is within your memory? A. No, Sir.

Q. Now, Sir, there is a little picture here that is made an Exhibit. Do you know to whom that belonged? A. I never saw it until it was passed over to the jury. I didn't know that it

was in the box; I didn't myself detect it in the box. I have not yet seen it.

Q. Do you know of its belonging to one of your younger children, having been picked up in the street? A. I know nothing about it other than that I found it in the box, or that it was found in the box which I brought here. I think it was found by Mr. Fullerton since he came into Court.

#### THE CLOSET WITH THE BEECHER GIFTS.

Q. Now, Sir, in this closet that you spoke of, do you know when the things that you found there were put there? A. I know nothing about it, Sir. I only know that I examined them, that is all.

Q. That is all you know? A. Yes, Sir.

Q. Now, was there anything in the way of gifts to Mrs. Tilton, that you found in that closet, which you were not aware of before? A. I was not aware of any of those that I found.

Q. You were not aware of any presents of books to Mrs. Tilton? A. No, Sir, other than this; I remember once that he gave her a copy of "Life Thoughts," and I think he gave her a copy of "Norwood," and he gave me one; but I was not aware of this great collection of books that I found in the closet, which were inscribed by him to her; those I had never seen.

Q. You speak of it as a great collection? A. Yes, Sir, it would fill a shelf about that length. [Illustrating with his hands.]

Q. What were these books? A. They were his writings—his various publications.

Q. Many copies of the same book? A. No, Sir; no copies of the same book.

Q. Separate books? A. Yes, Sir.

Q. Of his own works? A. Mainly his own works.

Q. And his gifts to your wife, as appeared by the title page and from his inscriptions, or something? A. Yes, Sir; the only way that I knew that they were gifts by him to Mrs. Tilton was from the fact that the books, on being opened, contained on the white leaf: "Presented to Mrs. Elizabeth R. Tilton, by her Friend Henry Ward Beecher," or something of that kind—inscriptions in various ways.

Q. What size books were they? A. What sized books?

Q. Yes, Sir; what sized books? A. Octavo books generally, if you know that size.

Q. Yes, I know it; I know all sizes. [Laughter.]

Q. They were octavo size? A. Yes, Sir.

Q. Consisting in the main of a series of his publications, which had been made from time to time? A. They were not so big as law books.

Q. "Octavos" is near enough for my purpose. Now, did you happen to be aware, among your acquaintances in Brooklyn, that Mr. Beecher had made presents of his books to others of his parishoners? A. No, Sir; I have been told on the contrary, that Mr. Beecher very seldom shows any courtesy to any of his parishoners—very seldom visits them, or makes them presents, or attends their funerals, or anything of that kind. [Laughter in Court.]

Mr. Evarts—Now, I ask to strike all that out.

Mr. Beach—Why did you not stop?

Mr. Evarts—How could I? My question did not call for it.

Judge Neilson [To the audience]: I must again speak to the gentlemen in the room to keep order. I have had to appeal to them before, and I stated that I would not sit here and administer justice in the midst of such interruptions. Now, Mr. Evarts, you may repeat your question, and that answer will be stricken out. The short answer you are entitled to.

Mr. Evarts—That will answer. The rest is stricken out.

Q. Now, Sir, had you sufficient acquaintance with the interior of this house, and the objects, pictures and books, etc., to know that all these gifts of Mr. Beecher were openly about in different rooms of the house, until your wife had occasion to take boarders, and in making arrangements for their accommodation, they had been packed into this closet? A. I knew nothing about it, Sir. I never saw these gifts until I saw them after her desertion. They were never scattered around the house that I know of.

Q. When was this period at which your wife resorted to keep boarders?

Mr. Beach—That is new matter.

Judge Neilson—It may be new matter, but I will take it.

Mr. Evarts—It bears upon this subject. It is not new matter in this sense.

The Witness—I don't know how long ago, but she came to me one day—

Q. No, matter; you don't know how long ago? A. No, Sir. I don't know the date. I think after the publication of the Woodhull scandal she wanted to live alone.

Q. And she began to take boarders after the publication of the Woodhull scandal? A. I think she did, but still I will not be positive as to the time.

Q. These presents you have no recollection of seeing about the house up to that time, and of their being displaced in reference to the arrangement for boarders? A. No, Sir; I never saw them; there was a gift of a picture—one or two pictures made years ago, which I knew about. I never knew anything about these books.

Q. Do you remember receiving the key of this closet from your wife?

A. No, Sir; I have not seen my wife since she left my house in July, except at a distance in the court room.

Q. That I understand; but it might be sent to you and received by you at your house? A. I know nothing of that.

Q. The key never was received at your house? A. I don't know that the key was ever taken away. When I made a search through the house I asked my housekeeper for the keys, and she gave me the keys of the various closets, and this one among them. I don't know how she got it.

Q. That is your recollection of how you came by it? A. Yes, Sir.

Q. And you opened the closet with the key? A. Yes, Sir

Q. And you know nothing of the key being sent by your wife? A. No, Sir.

Q. Now, at the time of your wife's last confinement, you were about the house, were you not? A. Yes, Sir.

MR. BEECHER'S PRESENTS OF FLOWERS.

Q. Did you know of these presents of flowers made to your wife in her illness? A. We always had flowers in the house. Sometimes I ordered them and sometimes she did. I knew that occasionally Mr. Beecher had sent her flowers.

Q. Did you know of any flowers being brought from Mr. Beecher's house to your house a few days after the child was born? A. I don't know, Sir.

Q. Do you know of Captain Duncan bringing them there? A. No, Sir; that is the first I ever heard of that.

Q. Do you remember being at the house when Mr. Beecher called upon your wife during her confinement, and there seeing him sitting? A. No, Sir; I have no recollection of that.

Q. Do you remember other gentlemen friends calling upon your wife during her confinement, and your seeing them there? A. I don't recall it, Sir; it is fully five years ago.

Q. Do you know of Mr. Bates being there and in her room, in the same room that the witness has testified about seeing Mr. Beecher in? A. I don't know any such thing; I never heard of it.

Q. Do you know Mrs. Mitchell, the monthly nurse, was there during all this time? A. I know that she was the nurse.

Q. Do you know that she was in the room with your wife while Mr. Beecher was there in the room? A. I didn't know anything about Mr. Beecher being in the room until I heard it from this stand yesterday from the person of that nurse.

Q. Do you remember that you were in the house at the time that Mr. Beecher called, the September visit which the nurse has testified about? A. No, Sir; I never heard of it until I heard it yesterday.

Q. You mean to say that you never heard of this occurrence before you heard of it yesterday? A. No, Sir.

Q. But do you remember being there on the day when the Equal Rights Committee met there and Mr. Beecher called upon that day? A. The Equal Rights Committee, under Mrs. Tilton's invitation, met at my house, I suppose, every week or so. I don't remember any special occasion when they were there.

Q. Do you remember that on this day in September there was a meeting of the Committee there and you were in the house. I don't say that you were a member of the Committee, because I presume they were all ladies, though I don't know; but do you remember of the meeting? A. Of that meeting.

Q. Of this Equal Rights Committee meeting on that day in September when Mr. Beecher called. A. I cannot single out any particular meeting of this Equal Rights Committee at my house. They met there once a week or once a fortnight. I was not always present. Mrs. Tilton conducted the exercises, I say "exercises." I mean the arrangements.

Q. Do you remember Mr. Bates calling there immediately after your wife's confinement, and seeing her in her room in the end of June more than once? A. I have no recollection of it at all, Sir.

Q. Have you a recollection of his being there on Sunday, the 27th of June? A. No, Sir.



Q. And you and he going off to Coney Island together? A. No, Sir.

Q. No recollection of that? A. No, Sir; I cannot fix the date for any such event so long ago; Mr. Bates was my near neighbor, living around the corner.

Q. An intimate friend? A. A very near friend; he ran in occasionally.

Mr. Evarts—Your Honor will remember that Article Six of what is called the sworn statement was allowed to be put in evidence on the part of the plaintiff. I want to inquire as to it.

Q. Now, was this Article Six, as put in evidence, written by you? A. Was it written by me, Sir?

Q. Yes, Sir; composed by you? A. The entire statement was composed by me.

Q. That I am not asking about; I am not asking about anything but this. Was this written by you? A. It certainly was.

Q. From beginning to end? A. Except so far as the quotation in it from Mrs. Tilton's letter.

Q. That was written by your pen also? A. No, Sir.

Q. That quotation was made a part of the article by you as composer? A. Yes, Sir.

#### MORE OF MRS. TILTON'S LETTERS.

Mr. Shearman—If your Honor please, I will now read two letters from Mrs. Tilton to her husband, dated Aug. 16th, 1869, and Sept. 4th.

Mr. Beach—Let us see them.

[Mr. Shearman handed the letters to Mr. Beach and Mr. Fullerton.]

Mr. Beach—This raises the question, whether your Honor's decision excluding the letters of 1872 that we offered, does not apply to these written in August and September, 1869.

Mr. Evarts—Why, there is no trouble about that, I take it; there is no rule upon the subject; it is quite anterior to the suspicion, whatever it was.

Judge Neilson—What is the date?

Mr. Evarts—1869.

Mr. Beach—But not anterior to the event, however.

Mr. Evarts—They are brought in in consequence of the evidence given yesterday, and my friends have introduced two letters. [To Mr. Beach.] You have introduced other letters in connection with this.

Mr. Beach—What letters?

Mr. Evarts—Unimportant letters, not discussed.

Mr. Beach—We didn't introduce them; we showed them to the witness to refresh his recollection.

Judge Neilson—Are they isolated letters or parts of the same correspondence?

Mr. Evarts—They are two letters. We asked for a third one of the 4th of September. Ah! we have got that; that is here.

Judge Neilson—In the same year?

Mr. Evarts—Yes, Sir.

Judge Neilson—Then read them.

Mr. Evarts—They are from Monticello; there are several letters in evidence.

[Mr. Shearman read the following letter, which was marked "Exhibit D, 109":]

MONTICELLO, Aug. 15, 1869, }  
Sunday. }

MY DEAR HUSBAND: These days are full of memories of the sickness and sufferings of little Paul a year ago! Our other darling is full of promise in the *future*—but the present—while he grows finely, all waking hours as well as sleeping, restless and crying with colic! I feel sure that he will be healthy; his lungs are strong enough for a public speaker already.

When I settled my board bill I had a long talk with the Dr. of my discontent and disappointment, and as I had said to Sally that I would use my fascinating and Christian charity to work a change for our mutual good, and so it proved; I drew out his *best* and there appeared the *gentle-man*! Since when we have good roast beef; been urged to take another piece, and a bountiful supply generally. In this you will rejoice with me. No reply yet from my Cornwall letter. Of course I shall now remain here. The scales say I have gained four lbs. notwithstanding poor food, and care of baby and children. I think with longing of our seventy-five easy-chairs, when my poor back rises halt upright. Then I look up to the *hills* from whence cometh my rest. I rejoice that at last you feel "The pleasantest place I know of is this house." So may it ever be! I missed my newspapers this week. Mr. Beecher wrote me a very summary characteristic letter, which I would inclose, save for the fear you would lose it.

I very much desire you would bring from Mr. Paige the plaster cast of little Paul and lay it in the bureau drawer among my treasures.

Did you have a visit from Sallie Lovejoy, and did she enjoy our pretty house? Tell me about it. To-day is our first—

Mr. Shearman—The letter breaks off here. I now read the other letter, marked, "Monticello, December 4th, Monday Evening." This has no date, but it is, no doubt, also 1869. It is so marked.

[Mr. Shearman read the letter, which was marked "Exhibit D, 110."]

MONTICELLO, Sept. 4th,  
Monday Evening. }

MY DEAR HUSBAND: Bella is sitting with me, the children asleep, and I have just finished reading your letter describing Mrs. T——'s funeral exercises. I feel very deeply for that young widow. Poor woman! I cannot bear to think of her dreadful loss. It unnerved me. Oh, my darling, may we not once more have a home of our own, where we may live our short lives together? You speak of coming up for next Sunday meeting; if so do prepare to spend the remaining two weeks with me, that we may return together. You can write your editorials here, and the rest you need after this last week's excitement.

Mr. Davison wished me to ask you if you could procure for him the large color'd picture used for illustrations in the Infant Class of Plymouth S. S., also any other apparatus that you think would be useful for that department. Mr. Huntington would help you, darling, in selecting them.

Bella leaves by to-morrow's coach. I was very glad to see her. We had a ride this afternoon and yesterday we strolled in the fields, but I could not say, as the Sabbath before I did, I was perfectly happy or as happy as any one could be in this world, for you were absent on so melancholy a mission.

Darling, do not forget to bring plenty of money that we may get through with our visit here safely.

I have felt my first home-sickness this week—that is, a desire to be back among the dear old places. I have gained only 1 lb. the last week—we sat for our pictures to-day, but I fear with poor success. The children are well and happy. Excuse this wretchedly hurried letter, as I want to send it by the early mail. We look for Emma to-morrow—Tuesday. Clarence is well, and has been well.

Love to dear mother and Joe.

Yours always,

WIFEY.

Q. Can you say who Bella is? A. Miss Isabella Oakly, formerly a teacher of our children.

Q. Do you know how soon after this letter of September 4th, in Monticello, Mrs. Tilton returned to New-York—to Brooklyn? A. I cannot say, Sir, out of my memory; I have nothing to identify it.

Mr. Beach—She speaks in the letter of remaining two weeks, and of Mr. Tilton coming there.

Mr. Evarts—That may be, and still it may not have been done.

Mr. Fullerton—Very often ladies write things which are not accomplished.

Mr. Evarts—You do not recall, Mr. Tilton, whether you went up there and spent two weeks? A. I do not recall that particular occasion. I have been at Monticello and made an address there.

Q. Can you tell how soon after the 4th of September she returned, or whether she returned any sooner than she expected? A. No, Sir, there is nothing in my memory that I would like to fix the date by.

END OF MR. TILTON'S EXAMINATION.

Mr. Evarts here inquired for another paper, and Mr. Morris produced the paper.

Mr. Evarts—We have called for a memorandum—something that is called in the evidence "Heads of difficulties;" it is a matter between Mr. Bowen and Mr. Beecher and I have not in my mind at all the evidence concerning it; but it seems the paper could not be found or produced at the time; it is now produced. It arose on my cross-examination, and I think was marked "Exhibit D 107." [Referring to Mr. Sherman]: Oh! I remember, it was not found until my friends had commenced their re-direct. I now offer that paper in evidence.

Mr. Beach—We object to it.

Mr. Evarts—For what reason.

Mr. Beach—As entirely immaterial, as a matter between Mr. Beecher and Mr. Bowen. We have nothing to do with that.

Mr. Fullerton—You might as well put in the multiplication table.

Mr. Beach—There is no evidence which lays any foundation for it.

Mr. Evarts—Well, we will have it marked for identification and look further at it in the morning. It is not anything that requires the witness's presence.

Judge Neilson—Are you through with the witness?

Mr. Evarts—Yes, Sir.

Judge Neilson—You close your re-direct examination?

Mr. Evarts—Our re-cross-examination, if your Honor please.

Judge Neilson—Yes; have you anything to ask on the other side?

Mr. Fullerton—This letter may call for a little examination. If they do not put it in evidence we may offer it ourselves.

Mr. Beach [Showing letter to witness]: Is this a letter that you wrote to your wife? A. Yes, Sir.

Q. And at the time of its date. A. Yes, Sir.

Mr. Beach [To the stenographer]: Just mark that for identification.

[THE TRIBUNE stenographer marked the letter "Exhibit 107" for identification.]

Mr. Evarts—Do you put it in?

Mr. Beach—I do not know yet.

Mr. Evarts—If you do not determine whether you put it in we will not determine finally as to whether we may ask anything about it

A JUROR FAINTS.

At this point Mr. Davis, one of the jurors, was observed to be ill, and there was some confusion in court.

Judge Neilson—[To the audience.] Wait a moment, gentlemen. Officer, open a window. I wish that the audience would remain quiet and let the jurors retire.

The juror partially revived and attempted to leave the Court, but fell back in a faint.

Judge Neilson—[To the audience.] It is better that the audience should retire now, and leave the jurors at liberty to retire afterwards.

Judge Neilson then asked the officers to take charge of the juror and see him safely to his home.

Mr. Morris—If your Honor please, the air has been quite impure. It helps the air very much to have the gas lit in the center of the building, but that was not done to-day.

The court then adjourned until Thursday at 11 o'clock.

TWENTY-NINTH DAY'S PROCEEDINGS.

MRS. TILTON'S BROTHER AND THREE OTHER WITNESSES.

MR. TILTON RECALLED FOR A FEW MOMENTS—GEORGE A. BELL GIVES EVIDENCE REGARDING THE INTERVIEW BETWEEN HIMSELF, MR. HALLIDAY, AND MR. TILTON—REMARKABLE TESTIMONY OF MRS. TILTON'S BROTHER—MR. BEECHER'S FRIENDSHIP FOR MR. MOULTON LAST JULY—WHAT A NEIGHBOR OF THE PLAINTIFF SAW.

THURSDAY, Feb. 18, 1875.

At 11:05 o'clock to-day Mr. Fullerton arose from his chair, glanced over the audience, and called out the name of George A. Bell, the next witness. It was observed at this moment that Mr. Evarts had not arrived, and Mr. Shearman asked first to be allowed to put a few questions to Mr. Tilton. By instruction of Judge Neilson, Mr. Tilton arose and remained standing in front of his chair, surrounded by his counsel, and did not resume the witness stand. Mr. Shearman then produced ten photographs of the Rev. Dr. Storrs, seven of the Rev. Dr. Wm. M. Taylor, two or three of the Rev. Mr. Talmage, and single ones of other prominent men. These pictures, which Mr. Shearman suggested were among the articles sent by Mr. Tilton to his wife after she left him last year, were intended



as an offset to the production by the plaintiff of eight photographs of Mr. Beecher found in a closet in the house of the witness. Mr. Tilton said that he never saw the photographs. Examination by Mr. Fullerton called out the fact that the photographs of Dr. Storrs were alike, as were also those of Dr. Taylor, and the examiner closed his questioning by saying inquiringly to the witness, "You don't know but that they might have been bought in Fulton-st. yesterday?" Mr. Tilton replied that he did not. Mr. Evarts, who had been delayed in crossing the river from New-York, arrived at this time, and Mr. Bell, being again called, pushed his way through the crowd and ascended to the witness chair.

Mr. Bell has been a member of Plymouth Church since 1847, and is a prominent friend and benefactor of the Sunday-schools of Brooklyn. He reared up the Bethel Mission of Plymouth Church from a small school to one of the most flourishing institutions of the kind in the city. He also organized the Mayflower Mission, and is now Superintendent of the Bethel Mission. He is a fine-looking gentleman, of mild manners, and extremely polite and dignified. His testimony, which was intelligently given, was almost entirely in regard to the interview between himself, the Rev. Mr. Halliday, and Mr. Tilton, but it was not admitted without protest from Mr. Evarts. The witness corroborated in the main the statements already made regarding that meeting, but stated differently Mr. Tilton's figure of speech about flags on the tree in front of Mr. Halliday's house. He said that when urged to deny the scandal, Mr. Tilton said: "It would be as though I were to go over to New-York and say, 'Before Mr. Halliday's house there is a tree covered with a thousand flags of all nations.' That would be a false statement, and yet there is a tree." Mr. Shearman conducted the cross-examination which did not distinctly tend to offset the testimony already given.

A very important line of the defense not before called up since the beginning of the trial—though it is familiar to those who have read Mr. Beecher's Statement—was broached to-day, Mr. Evarts making an eloquent appeal for the admittance of testimony showing that Mr. Beecher had been called to advise in the troubles between Mr. and Mrs. Tilton, and that the witness had an interview with Mr. and Mrs. Beecher in relation to that subject. But Judge Neilson would not allow the witness to testify to an interview which the plaintiff had not introduced in the direct examination. This question

was asked in various forms, and ruled out in each case, exceptions being taken by Mr. Evarts every time. After recess, Mr. Bell resumed the witness chair, saying, as he did so, that he had recollected something that he had not stated about the interview at Mr. Halliday's house. He remembered that Mr. Tilton said that Mr. Beecher had committed an offense against his family, and protested that Mrs. Tilton was a pure woman.

The calling of the next witness, Joseph H. Richards, caused a stir in the audience, for it was generally known that that gentleman was Mrs. Tilton's brother. Mr. Richards is apparently about 40 years old. He wears closely-trimmed black whiskers, and his eyes resemble those of Mrs. Tilton. He seemed to give his testimony unwillingly, and at one time turned to the Judge and asked a just appreciation of his painful position. He said that during the past ten years he had been a resident of Montclair, N. J., his business being that of an advertising agent in Broadway. He knew little about the scandal, but what he did have to say caused a profound sensation among the auditors. Mr. Richards stated that, on one occasion, while at Mr. Tilton's house, he unexpectedly opened the parlor door, which was closed, and saw Mr. Beecher seated in the front room, and Mrs. Tilton, with a highly flushed face, making a hasty movement away from the position which Mr. Beecher occupied. It was, the witness said, such a sight as left an indelible impression on his mind in relation with other matters. Mr. Evarts, in his cross-examination, brought out that Mr. Richards had not related this occurrence to the plaintiff or his lawyers until last Tuesday, though he had received a subpoena several weeks ago.

Jeremiah P. Robinson of the firm of Woodruff & Robinson testified concerning the meeting between himself, Mr. Beecher, and Mr. Moulton on July 4, 1874, when the defendant said, placing his hand upon Mr. Moulton's shoulder, "Moulton is as good a friend as God ever raised up for man. If it was not for him I do not know that I should be alive now." Through the cross-examination it was discovered that Mr. Moulton's partnership with the firm of Woodruff & Robinson is to end on March 1.

William M. Marston Brasher was the next witness. He is a large dealer in oilcloths in this city, and is part owner of the yacht Undine of the Brooklyn Yacht Club. He lives near Mr. Tilton, and testified that he had seen Mr. Beecher going into or coming out of Mr. Tilton's house five or six times, and

that he had seen the Plymouth pastor in the vicinity of the house perhaps fifty times, between 1866 and 1870. He once saw Mr. Beecher standing on Mr. Tilton's stoop about breakfast time, between 6 and 7 o'clock, he thought.

Mr. Beach now threw down the gauntlet in regard to the reserve question as to whether the remainder of the interview between Mr. and Mrs. Tilton regarding the appearance of the latter before the Plymouth Investigating Committee was to be admitted, or that part of the interview already given stricken out. An exceedingly warm debate followed, Mr. Evarts objecting in pronounced terms, and Mr. Beach clinging to his claim with tenacity. Mr. Beach was finally defeated in his effort, and it being after 4 o'clock, the court adjourned.

### THE PROCEEDINGS—VERBATIM.

#### MRS. TILTON'S STORY TO THE COMMITTEE.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Fullerton—George A. Bell.

Judge Neilson—Mr. Fullerton, there was a question reserved, which perhaps you thought was not worth looking at, or may have overlooked, in reference to an instance in which Mr. Tilton answered a question at some length, at any rate at the length that his wife said she had been before the Committee and denied everything. At that point the objection came in.

Mr. Fullerton—Yes, Sir.

Judge Neilson—And it was then claimed that the rest of that conversation must be given, because it had been permitted up to that point. Mr. Beach spoke about looking at some authorities. The question was, whether the rest of that conversation should be given, or whether what had been given should be stricken out.

Mr. Fullerton—Yes, Sir.

Judge Neilson—Are you satisfied that it stand as it is?

Mr. Fullerton—No, Sir, we desire bringing the same question up at some future time, on giving some other evidence in regard to it.

Judge Neilson—Very well.

#### MR. TILTON AGAIN UNDER EXAMINATION.

Mr. Shearman—If your Honor please, if we are going on before Mr. Evarts comes—

Judge Neilson—I thought he was here.

Mr. Shearman—Mr. Evarts is not here.

Judge Neilson—Then we will wait.

Mr. Shearman—We don't desire to have the witness called until he comes.

Judge Neilson—No, Sir.

Mr. Shearman—If your Honor will permit Mr. Tilton to take the stand a moment that we may supplement one question which was asked

Judge Neilson—Well. [To Mr. Tilton.] You might stand up there and answer it.

[Mr. Tilton stood up by the chair in which he had been sitting.]

Mr. Shearman—Do you know Katie McDonald? A. Yes, Sir; I have known her for twenty years.

Q. Who is she? A. An old servant of my father's house, and from time to time an inmate of my own, and my house-keeper last Summer.

Q. Did you direct her to send to Mrs. Tilton her things, some things, from your house? A. I told Katie whenever Mrs. Tilton sent for anything, to give her everything she asked for.

Q. Do you not know, Mr. Tilton, that Katie McDonald, by your directions, sent to Mrs. Tilton a trunk full of things? A. Yes; two or three trunks, I think.

#### A SMALL PICTURE GALLERY PUT IN EVIDENCE.

Q. Please look at these photographs and say whether these photographs were not among the things belonging to Mrs. Tilton. I hand you ten photographs of the Rev. Dr. Storrs. [Handing witness photographs.] A. I don't know anything about these, Sir.

Q. There are ten, are there not? A. One, two, three, four, five, six, seven, eight, nine, ten, &c. One of Dr. Leavitt.

Mr. Fullerton—One moment.

Judge Neilson—Well, the witness says he don't know anything about them.

Q. Please state what those are that I now hand to you? [Handing witness photographs.] A. Photographs of somebody; I don't recognize the face.

Q. Are they not photographs of Rev. William M. Taylor, D.D., of New-York? A. I have never seen Dr. Taylor except in the pulpit; they may perhaps be, though.

Q. You have seen him in the pulpit? A. I have heard him preach once or twice; once, I think.

Q. Do you believe that those are photographs of Dr. Taylor? A. Well, I couldn't swear that they are.

Q. How many of them are there, seven are there not? A. I will count. One, two, three, four—there are seven here.

Q. Please look at the photograph that I now hand you and state whether those are photographs of the Rev. Dr. Talmage? [Handing witness photographs.] A. Yes, Sir.

Q. Two of those, are there not? A. Yes, Sir.

Q. Please look at that picture and say who that is a picture of? [Handing witness a photograph.] A. That is Mr. James H. Bates.

Q. A personal friend of yours, is he not? A. Yes, Sir, for many years.

Q. A gentleman who was bail on a bond for you, is he not? A. Yes, Sir.

Q. Were you aware that Mrs. Tilton had that photograph in her possession? A. I never saw it before, Sir, to my knowledge.

Q. Please look at that picture and state what that is? [Handing witness a photograph.] A. That is Horace Greeley.

Q. Were you aware that Mrs. Tilton had that in her possession? A. No.



Q. Don't you know that you gave her that yourself, Mr. Tilton? A. I do not, Sir.

Q. Will you swear that you never did? A. No.

Q. Please look at that picture and say what that is? [Handing witness a photograph.] A. Henry Ward Beecher.

Q. Did you not give that photograph to Mrs. Tilton yourself? A. I don't know, Sir.

Q. You will not swear that you did not? A. No, Sir.

Q. That is a photograph of whom? [Handing witness a photograph.] A. A photograph of my old associate in *The Independent*, Mr. Joshua Leavitt, now dead.

Q. He was a clergyman, was he not? A. Yes, Sir.

Q. A very intimate friend of the family? A. Whose family?

Q. Your family? A. No, Sir; I don't know that he ever was at my house; I think not. Yes, Sir, I think he was on the occasion of the funeral.

Q. You can only remember of his being there once? A. That is the only occasion which I now recall.

Q. Were you not aware that he was in the habit of frequently calling at your house? A. I am aware that he was in no such habit at all.

Q. That is, you are not aware of it? A. I am aware that he was not in the habit of frequently calling at my house.

Q. Then if he called frequently it must have been in your absence? A. Yes, Sir; when I didn't know it, like Mr. Beecher's visits.

Q. Dr. Leavitt was an old clergyman, and you didn't know of his visits, if he did visit? A. No, Sir; not frequently.

Q. Did you never see any of Dr. Storrs's pictures in your house, Mr. Tilton? A. I don't think I ever possessed a picture of Dr. Storrs.

Q. I didn't ask you that; I asked you whether you ever saw pictures of Dr. Storrs in your house? A. Not that I remember, Sir.

Q. Then all these pictures, these photographs, which are now shown to you, are photographs which you never saw, and were not aware of their existence? A. I don't know anything about them.

Judge Neilson—He has answered that in detail.

Mr. Shearman—There are a few more, your Honor. [To the witness.] You do not remember ever seeing any of these pictures? A. [Referring to another photograph.] That is Frederick Douglass. I have got one or two little photographs of Frederick Douglass. I don't think I ever saw that one. That is Judge Morse. [Referring to another photograph.]

Q. Did you ever see those? A. I have seen very many photographs of Judge Morse. He is a relation of ours. I could not say that I have ever seen them.

Q. Judge Morse is your wife's stepfather, is he not? A. Yes, Sir.

Q. Mr. Bates was a frequent visitor at your house, was he not, in 1869? A. I could not answer as to that, Sir. Mr. Bates has been for many years a friend of our family, and a very near neighbor. I think he has always been in the habit of calling more or less frequently. I could not answer for any particular time.

Judge Neilson—That is all.

Mr. Shearman—We offer these photographs.

[Photographs marked "Ex's D 11," for identification.]

#### RE-RE-DIRECT EXAMINATION OF MR. TILTON.

Mr. Beach—[To the witness.] This portrait of Mr. Beecher that was handed to you—this photograph—does it represent him as a young man? A. Yes, a much younger man than he now is. I should think 15 or 20 years younger.

Mr. Fullerton—These photographs of Dr. Storrs you never saw before, I understand you, that you know of? A. Not to my knowledge.

#### THE PRINTS OF EACH SET OF PHOTOGRAPHS IDENTICAL.

Q. Those are four of Dr. Storrs, are they not?

[Showing witness four photographs, cabinet size.] A. Yes, Sir.

Q. Taken from the same plate, apparently, are they not? A. Yes, Sir; copies of the same.

Q. Apparently fresh? A. Yes, Sir.

Q. New? A. Yes, Sir; they look so.

Q. Unsoiled? A. Yes, Sir.

Q. You don't know but what they were bought yesterday in Fulton-st., do you? A. I should not like to swear that they were. I don't know anything about them.

Q. You did not find them in the closet, any way, did you? A. No, Sir; I never saw them to my knowledge.

Q. Now, take those and tell me whether they are not struck from the same plate. [Handing witness six smaller photographs of Dr. Storrs.] A. Yes, Sir; they are all the same.

Q. The same pictures? A. Yes, Sir.

Q. Fresh? A. They look pretty fresh.

Q. Clean? A. Yes, Sir.

Q. They were not in the closet, that you know of? A. No, Sir; they were not in that closet.

#### MRS. TILTON FREE TO TAKE WHAT SHE PLEASED FROM THE HOUSE.

Q. You instructed this servant, I understand, to send to Mrs. Tilton whatever she sent for? A. I told Katie McDonald, the old housekeeper, that whenever Mrs. Tilton wanted anything to let her have it, to send her everything that she asked for—any articles in the house, any article of furniture—and I remember adding that "if she wants the carpets take them out and send them to her."

Q. Who packed the trunks which were sent? A. Katie McDonald packed them.

Q. Had you anything to do with it? A. Nothing at all, Sir.

#### ANOTHER CROSS-EXAMINATION.

Mr. Shearman—Did you examine your wife's bureau drawers yourself? A. I went through the house after she deserted it, and went through the closets and through the bureau myself.

Q. And you mean to say that you went through all the bureau drawers and did not see these pictures? A. I mean to say exactly that, here, that never to my knowledge have I seen them until this morning.

Q. We understand that, but did you make a careful search all through the house? A. Yes, Sir, careful as I could.

Q. Did you open all your wife's desks? A. All my wife's desks?

Q. Yes? A. She didn't have but one.

Q. Did you open that one? A. Yes, Sir; I did.

Q. Did you unlock it? A. It was not locked.

Q. How about this closet door; you say you have no recollection of the key coming to you? A. I have a recollection of asking Katie McDonald for the key and she handed me the key.

Q. Do you remember getting a cast of your child's face out of that closet? A. No, Sir; I remember Mrs. Tilton sent, through Katie McDonald, to me for the little box of souvenirs of the dead child, some rosebuds, some letters and a little plaster cast of the dead face. They were all in a little box; I sent all these enclosures to her address.

Q. Where was that box? A. That box was in this closet.

Q. Did you open that box? A. Yes, Sir; I did.

Q. What did you find in that box? A. I found in that box the little plaster cast; I simply opened the box to make sure the cast was there; I did not examine into the things at all. She wanted, particularly, the plaster cast of the dead child, and I sent not only that but all the other little souvenirs which were attached to it.

Q. Can you recollect what day that was? A. No, Sir.

WHERE THE PUBLISHED CORRESPONDENCE WAS FOUND.

Q. Wasn't it the same day on which *The Brooklyn Eagle* republished from *The Chicago Tribune* these copies, or copies of letters between yourself and your wife? A. I don't remember that, Sir; don't associate the two events together.

Q. Well, had you not, a considerable time before, opened that closet and taken out these letters and had them published—and sent them on for publication? A. The letters which were published in *The Chicago Tribune*, from my wife, were not in that closet.

Q. I simply desire to identify the dates that they were not in the closet. Now, where were these letters? A. These letters were in a closet on another floor of the house up-stairs. The little closet where Mr. Beecher's presents were kept was on the second floor. The closet in which my wife's correspondence and mine was found was on the third floor.

Q. How many rooms did your wife have for her own use, at the time that she left the house? A. She hadn't any—left them all behind her.

Q. I mean at the time just before she left the house? A. Well, Sir—

Q. One minute before Mrs. Tilton left the house, how many rooms did she have for her own use, one or more? A. Why, she had two or three.

Q. For her own personal use? A. Yes, Sir.

Q. Were not one or two rooms or more, taken up by boarders? A. Yes, Sir; these little things were locked in a closet to which no member of the family had had access, I think, for a year or more.

Q. How do you know that? A. Because they were in a room, which room was occupied by one of the boarders; I know I had not been in it for a year.

Q. They were put away in a closet because the room was occupied by the boarders? A. No, Sir; I think they were put away in the closet to be concealed from me.

Q. That is your opinion about it?

Mr. Fullerton—That is what you asked.

Mr. Shearman—I understand that.

Mr. Fullerton—Yes, Sir; am I to understand you have got it, too?

The Witness—They were locked in the closet of a room to which I had no access, and had not had for a year.

Q. How was it that you had no access to it? A. Simply because it was occupied by Mr. and Mrs. Taylor, and I never intruded upon it.

Q. And was not that a pretty good reason for keeping that closet locked?

Mr. Beach—Oh, well; we don't want any reasons of that kind here.

Mr. Shearman—I am satisfied with that, Sir.

Mr. Beach—I am glad you are.

Judge Neilson—Mr. Fullerton, proceed; Mr. Evarts is here.

Mr. Evarts—If your Honor please, I was not delayed only by some ordinary interruptions in the ferry boats, by passing tows and difficulties of getting teams aboard; no especial interruption of ice.

TESTIMONY OF GEORGE A. BELL.

George A. Bell was then called on behalf of the plaintiff, and sworn.

Mr. Fullerton—Where do you reside? A. On Columbia Heights—176.

Q. In this city? A. In this city.

Q. How long have you been a resident of Brooklyn? A. For twenty-eight years, nearly.

Q. And what connection, if any, have you had with Plymouth Church during that time, or any part of that time? A. I have been a member of Plymouth Church since the beginning of November, 1847.

Q. I take it for granted that you know Mr. Henry Ward Beecher? A. Yes, Sir.

Q. And do you also know the Rev. Mr. Halliday? A. Yes, Sir.

Q. The assistant minister of Plymouth Church? A. Yes, Sir.

THE TILTON-HALLIDAY INTERVIEW DESCRIBED.

Q. Do you recollect of being at Mr. Halliday's house at any time when Mr. Tilton came there? A. I remember being at Mr. Halliday's house when Mr. Tilton was there.

Q. I take it, then, that he was there when you arrived? A. Yes, Sir.

Q. State whether, at that time, a paper was exhibited by Mr. Tilton? A. No, Sir.

Q. Was there any other person present than yourself, Mr.



Halliday and Mr. Tilton at this meeting? A. No, Sir; no one else.

Q. Can you tell us when it was? A. It was either on the day or the day before the fire at Woodruff & Robinson's stores; it was on a Monday morning; if the fire was on Monday night, then it was on the day of the fire; if the fire was on Tuesday night, I cannot remember how that was; I know it was on Monday morning.

Q. You can fix it by that event? A. I can fix it by that event.

Q. Only in that way. Was this so-called scandal the subject of conversation on that occasion? A. Yes, Sir.

Q. Who participated in that conversation? A. Mr. Tilton did the greater part of the talking; Mr. Halliday did to some extent; and I did, somewhat more than Mr. Halliday.

Q. In that conversation did Mr. Tilton endeavor to illustrate the innocence of Mrs. Tilton by any figure of speech that he used referring to flags?

#### THE TESTIMONY OBJECTED TO.

Mr. Evarts—Don't answer, Mr. Bell. I don't understand it is competent for the plaintiff to give this conversation in evidence.

Judge Neilson—The same interview has been inquired into.

Mr. Evarts—No doubt, under our examination from Mr. Tilton.

Judge Neilson—I think we will take it, Sir.

Mr. Evarts—But if your Honor please, it was competent for us, Mr. Tilton being a party, to contradict his statements that are material and pertinent as part of the issue and others if we choose. It is also competent for us to examine him concerning matters that are pertinent, and then competent for us to contradict him. When we do so, then will arise, if at all, the question whether they can confirm his statements by other witnesses. But they cannot anticipate our contradiction by calling witnesses to prove an interview, which is what they are now, I suppose, doing.

Judge Neilson—Well, at most that presents a question as to the order of proof. We will take this evidence.

Mr. Evarts—Supposing we rest with Mr. Tilton's statement, and bring in no contradiction, then what rules of evidence are there that allow them to prove a conversation between Mr. Tilton and third persons, to which Mr. Beecher is not a party?

#### THE COURT ADMITS THE TESTIMONY.

Judge Neilson—If you rested there they could not. I think we will take this evidence now, and you take an exception. Go on.

Mr. Evarts—Will your Honor be so good as to note my exception?

Mr. Fullerton—Your Honor will also remember that we offer this evidence because Mr. Tilton was asked in reference to this conversation, and he is a party to the action. They may not undertake to contradict him, but to hold him responsible for what was then and there said as a party; that fact the counsel ignores in the presentation of this question.

Judge Neilson—Yes, Sir.

Mr. Fullerton—My question was whether Mr. Tilton at that interview illustrated the attitude of his wife with reference to this scandal by any figure of speech referring to flags or a tree; I want to identify the time of the conversation? A. I think the figure of the tree was used in a slightly different connection to what appears by your question.

Q. Well, Sir, I only wanted to identify the conversation to which Mr. Tilton referred, or to which his attention was called; he did use the figure of a tree? A. Yes, Sir.

Q. Now, state what occurred at that time? A. Do you mean at the interview or—

Q. At the interview; at that interview; at that interview at Mr. Halliday's, when you were present and Mr. Tilton was present.

Mr. Evarts—That I object to.

Judge Neilson—Yes.

Mr. Evarts—I inquired as to certain statements of the witness, who was then on the stand.

Judge Neilson—We allow this question Sir.

Mr. Evarts—Please to note my exception.

The Witness—The interview continued for over four hours, so that if I were to give you what took place in the interview it would take a very long time; I could not do it besides.

Q. Well, condense it as well as you can, Mr. Bell, and give us the substance of it; the material parts are all that we wish.

Mr. Beach—Don't be deterred by the time it will take; let us have it substantially.

#### THE CONVERSATION DETAILED.

A. The interview began, so far as I was concerned, by Mr. Tilton urging me to continue in the parlor into which I had been introduced by the servant girl, she, I suppose, not knowing that Mr. Halliday had been engaged; Mr. Halliday joined in the request of Mr. Tilton that I should remain; I demurred, but as they both—Mr. Tilton appeared to be anxious and Mr. Halliday was willing I should remain—I did remain. Mr. Tilton commenced then, after we were seated, by stating his reasons for calling on Mr. Halliday. Shall I give them?

Q. Yes, Sir. A. He said he had called there at the request of Mr. Moulton, who had told him that Mr. Beecher had been to see him the previous night, after service, informing him that there was to be action taken by the deacons of the church or by the Examining Committee; that Mr. Beecher had suggested to Mr. Moulton that he should see Mr. Tilton, and tell him to come down and see Mr. Halliday, and make some explanation to him which would make it unnecessary for the deacons to have their meeting. He then went into a long history of the scandal prior to the Woodhull and Claflin publication, which had then taken place but about a fortnight, or three weeks, or four weeks, commencing with the affairs of the publisher of *The Independent*, and what the publisher had stated to him; he said to us that these matters he gave to us in the strictest confidence, not to be mentioned by us to any one; after he had done that I think he paused, and I said to him: "Mr. Tilton, if that is all there is of this matter, your duty to your wife, to Mr. Beecher, who is your pastor, to the church, and your duty to yourself, all demand that you should

come out and make a denial of this scandal." He said in answer to that that he could not do it; I said very pointedly and emphatically, "That is absurd." Of course I am not repeating the exact words; I am merely giving my memory of a very long conversation. I said to him, "That is absurd. Who is suffering by this thing? Mr. Beecher, your own wife, yourself, all your friends, and the church—they are all suffering, and there is no reason whatever that should prevent your coming out and denying this thing." Then I made some remarks about the gentleman who had told him these stories against Mr. Beecher.

Mr. Evarts—The publisher of *The Independent*?

The Witness—Yes, Sir. I then insisted further that he should make a denial. He said, "Mr. Bell, I cannot make that denial." I said, "Why not?" "Because," he said, "there is something in this thing which prevents me." I said, "What is it?" At this point of the interview I think I remember that I took almost the control of the conversation. He then narrated circumstances or impression, opinions of his in regard to Mr. Beecher's conduct towards Mrs. Tilton, and when he was through with that I said: "Why, even then—even now I cannot see why you should not come out and contradict this matter." He said: "I cannot do so; it would be—there is an underlying truth in this story told by these women, which would make it worse for Mr. Beecher, if I were to come out and contradict it, than if it were let alone; it would be as though I were to go over to New-York and say, 'before Mr. Halliday's house there is a tree, covered with a thousand flags of all nations.' That would be a false statement; and yet there is a tree—there is a grain of truth—there is an underlying truth in this matter which prevents my coming out and contradicting it." It was in that connection that the figure of the tree was used. Then I think I remember saying to him: "What proof is there? We have this thing merely upon your word. You cannot expect us to believe such a story as this without proof." He said: "The proof exists in writing above the signature of Mr. Beecher." "Well," I said, "let us see the writing," bringing down my hand emphatically. I think he said: "I cannot do so; it is not in my possession; I have no objection that you should see it." Then he informed us that Mr. Moulton possessed the writing, and that if we would go—No, I then said: "Will Mr. Moulton let us see the writing?" because I felt if we could see that, it would either explode the whole story, or put us in a position to take intelligent action about it. He said, "I have no idea—" Oh! he said, "I have no objection to your going in your official capacity to Mr. Moulton, and that he should show you the paper." "Well," I said, "I am not an officer of the church; I cannot go in my official capacity; but I am a member of the church, and as such I demand that I shall see the paper." He said: "I will object to Mr. Moulton showing you the paper unless you are an officer of the Church and go to him in your official capacity." Said he: "Mr. Halliday can go; he is assistant minister." I said: "I will object to Mr. Halliday going in his official capacity to see the paper; Mr. Halliday can go as a member of the church as we would go together as members of the church to see it; but I would object to Mr. Halliday going as assistant pastor, be-

cause in that way it would be as it were—it would commit the church as it were to his action.

Mr. Evarts—You are now giving us what you said.

Mr. Beach—The substance of it.

The Witness—What Mr. Tilton said to me and what I replied—the substance of it; of course I cannot repeat the words, because it is two and a half years ago.

Mr. Fullerton—Please go on with the narration. A. I was hesitating, thinking.

Q. Take your time. A. Well, Sir; I think I have given you the gist of the long conversation; it was very long, and we went over and over the same matter quite frequently. The latter part—I think for the last two hours of the interview—it consisted in my driving Mr. Tilton to let us see the papers in some way or other.

Q. Well, Sir; if you recollect anything else that occurred there, you may state the substance of it. A. Mr. Tilton went at length into his conduct towards Mrs. Woodhull, in regard to the time previous to the publication of the statement.

Q. Well, what did he say on the subject? A. I think the bulk of it was trying to show that his whole effort through that time—shorter or longer—the time he knew her—was in regard to repressing her in regard to the publication of the scandal.

Q. As she had threatened to do? A. I cannot remember that.

Q. Well, do you remember, on reflection, anything else that occurred at that interview which you have not stated; or have you given us the substance of the whole thing? A. I think I have given you the substance of the whole conversation; I may have omitted something.

Q. Were you ever present at any time when the church, in its official capacity, took action with reference to this scandal? A. I cannot remember distinctly that I was; I have an indistinct remembrance, but not sufficient to be sure.

#### MR. BEECHER ANXIOUS TO PUT OFF THE DEACONS' MEETING.

Q. Do you remember being present at any time when Mr. Beecher was present, when the subject of the scandal was up for discussion? A. Do you mean by "discussion" discussion with other people, or in meeting?

Q. Well, in meeting, or among yourselves? Was anything ever said in your presence with reference to church action as to this scandal when Mr. Beecher was present? A. Yes, Sir.

Q. State when it was first. A. I think the only time that is distinctly in my memory is on the very morning of this interview at Mr. Halliday's house.

Q. Where did it take place. A. In Mr. Beecher's house.

Q. In Mr. Beecher's house? Who were present? A. Mr. Beecher and myself.

Q. At what time in the day was it—or the morning? A. I think it was before 8 o'clock in the morning.

Mr. Beach—[To Mr. Fullerton.] Inquire whether it was before or after the interview at Halliday's.

Q. Was it before or after the interview at Mr. Halliday's? A. It was before that interview, Sir.

Q. What occurred at the interview between yourself and Mr.



Beecher? A. Mr. Beecher said he had sent for me, because he understood—he had heard, I think, the day before—that there was to be a meeting of the deacons, in regard to this matter; that he was very anxious that no meeting should take place, and he wished me to go and see Mr. Halliday, and arrange with him that the meeting should not take place.

Q. Give us the conversation in detail as near as you can recollect, Mr. Bell? A. It is impossible for me ever to give the words of a conversation.

Q. That is certainly so, Sir; but give us the substance of the interview? A. Mr. Beecher said he had sent for me; I think I have given you about the substance; Mr. Beecher said he had sent for me because he had heard, the day before, that there was to be a meeting of the deacons that night—on that Monday night; that he was very anxious that the meeting should not take place; that he was going away to Boston, and he could not do anything about it, but wanted I should go round to Mr. Halliday's house and arrange with Mr. Halliday that the meeting should be put off, or not take place, I think.

Q. Did you go from there to Mr. Halliday's? A. Yes, Sir.

Q. And was it then you met Mr. Tilton there? A. Yes, Sir.

Q. Did Mr. Tilton suggest to you any mode of reasoning with the deacons, by which you should prevent the meeting? A. No, Sir.

Q. Did he give any other reason for it than you have stated? A. No, Sir.

#### THE ALARM A FALSE ONE.

Q. Who were the deacons of the church at that time? A. I cannot remember the names; the Manual will give the names.

Q. How many were there? A. It would be the Examining Committee; we sometimes use the word "deacons" when we are really meaning the Examining Committee; at that time the deacons were members *ex officio* of the Examining Committee.

Q. Well, how many deacons were there? A. I think there were nine deacons and six members of the Examining Committee.

Mr. Evarts—Six besides?

Mr. Fullerton—Yes.

Q. Can you name any of the deacons at that time? A. The only one I know positively—well, I think I am positive about that—was Mr. Hawkins; I know Mr. Hawkins; I think he was Chairman of the Board of Deacons.

Q. Was Mr. Halliday, *ex officio*, a member of the Examining Committee? A. I think he is a member of the Board of Deacons.

Q. Of the Examining Committee? A. He was a member *ex officio*—the same as the pastor of the church—of the Board of Deacons; not a deacon, but a member of the Board of Deacons.

Q. Before you left Mr. Beecher, did you say anything in opposition to his suggestion, and if so, what? A. I did not say anything.

Q. You did not. Did you go to see the deacons as you were requested? A. No, Sir.

Q. You went to see Mr. Halliday, however, in pursuance of that request? A. Yes, Sir.

Q. Did you say anything to Mr. Halliday on that subject? A. I told him why I had gone there—after Mr. Tilton had left.

Q. You stated then the request Mr. Beecher had made of you to Mr. Halliday that morning? A. Yes, Sir.

Q. Did the deacons meet? A. No, Sir; it was a mistake on the part of Mr. Beecher; I understood from Mr. Halliday that there was to be no meeting of the Board of Deacons.

Q. It was an error? A. Yes, Sir.

Q. And they did not meet? A. I don't know that; I was not a deacon and so I could not know anything about that.

Q. Did you have any other or further conversation with Mr. Beecher upon that subject? A. Not at that time, Sir.

Q. At any other time? A. I had another conversation with Mr. Beecher, but I can scarcely say that it was upon that subject; I had not got into the subject.

Q. Was the subject alluded to? A. The subject of his troubles was alluded to; that was all.

Q. When was that interview? A. That was about a fortnight before I went to England; I went to England on the 10th of May, 1873; this was about a fortnight before.

Q. Then it was subsequent to the interview at Mr. Halliday's? A. Oh! yes; about six months.

Q. About six months? A. Five or six months after; one was in November, the other in the last of April or the beginning of May.

Q. Do you still retain your membership in Plymouth Church? A. Yes, Sir.

Q. Were you ever an officer of that church? A. Yes, Sir; frequently.

Q. How long a service have you rendered as an officer in that body? A. I never counted up the number of years, Sir; I have been a member of the Examining Committee of Deacons frequently.

Mr. Fullerton—[To Mr. Evarts.] You can ask, gentlemen.

#### MOTION TO STRIKE OUT PART OF MR. BELL'S TESTIMONY.

Mr. Evarts—I now move, if your Honor please, to strike out all the evidence given by this gentleman other than that of his interview with Mr. Beecher. All the rest of his testimony which is of any importance is, of course, his interview with Mr. Tilton, which he has testified concerning. I had not in Court any authority that occurred to me would be useful, but I ask your Honor's attention to the case of *Dudley vs. Bolles*, in our old Supreme Court, in the 24th of Wendell, p. 471. The Court says [Reading]:

The reception of Bartle's statements in confirmation of his testimony was erroneous. We have recently, in *Robb vs. Hackley*, 23 Wendell, 50, *et seq.*, reconsidered the *dictum* to the contrary in *The People vs. Vane*, 12 Wendell, 78, and agreed that consistent statements cannot in general be received in reply to the contradictions of a witness; *a fortiori*, are they inadmissible in answer to direct and positive contradiction by other witnesses.

Judge Neilson—Your motion is denied, Sir.

Mr. Evarts—In the case of Robb vs. Hackley, the same Court say [Reading]:

As a general and almost universal rule, evidence of what the witness has said out of Court cannot be received to fortify his testimony. It violates a first principle in person or his property, by the declarations of a witness made without oath. And, besides, it can be no confirmation of what the witness has said on oath, to show that he has made similar declarations when under no such solemn obligation to speak the truth. It is no answer to say that such evidence will not be likely to gain credit, and consequently will do no harm. Evidence should never be given to a jury which they are not at liberty to believe.

Judge Neilson—I think there is a distinction between those cases and the case before us, and your motion is therefore denied.

Mr. Evarts—In this particular, no doubt, the distinction arises that such evidence is not offered in anticipation of contradiction. This objection that I now read from the authorities would apply, if, even after the contradiction of Mr. Tilton, peremptory statements of his were produced.

Mr. Fullerton—We have given the balance of the conversation that has been introduced; that is all, Sir.

Judge Neilson—[To Mr. Evarts.] The motion is denied.

Mr. Fullerton—This question will come up in another form.

Mr. Evarts—Oh! your Honor understands me as excepting; I except to your refusal to strike out.

Judge Neilson—[To Mr. Evarts]: Do you cross-examine, Sir.

Mr. Shearman—Yes, Sir.

#### CROSS-EXAMINATION OF MR. BELL.

The witness was then cross-examined by Mr. Shearman.

Q. At the time of this Deacons' meeting, or meeting of the Examining Committee, was supposed to be about to take place, do you know whether or not any one in the Church had any idea of making an attack upon Mr. Beecher? A. So far as I know, Sir, it was the very opposite.

Q. So far as was within your knowledge there was not the remotest idea on the part of any deacon or member of the Examining Committee of making an attack upon Mr. Beecher, was there? A. So far as I know, no, Sir.

Q. You were very familiar with those gentlemen, were you not? A. Yes, Sir; very.

Q. You were very familiar with the sentiment of the Church, at that time, were you not, Mr. Bell? A. I was.

Q. I think no man more so. We will excuse your modesty, but is it not the fact? A. I was very well acquainted with the sentiment of the gentleman.

Q. Now, Sir, was it not the universal feeling in that church before one word had been said by Mr. Beecher, in church or out of church, on that point, that no action should be taken upon the subject of the Woodhull scandal, but that it should be treated with silent contempt?

Mr. Beach—That is objected to.

Judge Neilson—I think we will take it, Sir.

#### SENTIMENT IN PLYMOUTH CHURCH ABOUT THE WOODHULL SCANDAL.

Mr. Shearman—I am talking now about the early part of November, 1872? A. Yes, Sir. My answer to that probably would be given in the fact that the rumor of the Deacons' meeting, which had come to Mr. Beecher's ears, probably arose from a conversation that was held in the lecture room on the Friday night previous, the persons conversing then being Mr. Hawkins, the Chairman of the Board of Deacons, I think, Mr. Shearman and myself. Mr. Shearman and myself both urged upon Mr. Hawkins that, as a fortnight or three weeks had gone by without Mr. Tilton coming out and denying the scandal, it was the duty of Mr. Beecher and the Church to do so.

Q. One moment; I ask you about the early part of November, 1872; now was this not the first sentence of that conversation in the early part of November, 1872? A. If the interview at Mr. Halliday's was on the 18th that would be on the 15th of November; did you ask previous?

Q. That is the middle of the month. I was coming down to that, Mr. Bell. Now, the first point I want to get at is, whether in the early part of November—the first week of November, 1872—it was not the universal sentiment that no notice should be taken in the Church of that publication? A. Immediately on the publication that was the sentiment of the gentlemen who were in the Church.

Q. Since you have referred to a conversation with Mr. Shearman, you perhaps remember that you saw Mr. Shearman at the meeting on the Friday night following that publication, do you not? A. I don't remember; very likely I did; Mr. Shearman was always there when I was.

Q. Don't you remember coming to Mr. Shearman, in the presence of quite a number of the officers and members of the Church on that Friday night, and saying that it was universally agreed that not one word of allusion should be made to that subject in the Church meeting? A. I cannot remember that, Sir.

Q. Can you not remember something like that? A. I cannot remember anything like it. That is, I cannot remember coming to Mr. Shearman then with any statement at all; but that I met Mr. Shearman several times in the first fortnight after the publication of the Woodhull and Claflin scandal I have not the slightest doubt, and that at this meeting that was the course of the conversation.

Q. And that was the general understanding among the gentlemen? A. During the first fortnight it was almost universal.

Q. Then, after that period, and before the other conversation to which you have alluded, it began to be understood, did it not, that Mr. Tilton, or to be rumored that Mr. Tilton was in some way responsible for this publication? Was there not such a rumor? A. It never came to my ears, Sir.

Q. Was there not a rumor that he was responsible for the scandal itself in some way, or for the story or publication? A. Many of us thought very likely he was, but I don't think that we had anything more to base it upon than that.

Q. It was a subject of talk, was it not? A. He was.



Q. The fact—that supposed circumstance was a subject of conversation, was it not? A. No, Sir.

Q. How did you know that many of us thought so, then? A. I think I was present at nearly every meeting of the members of the church and congregation, and there were several took place after the publication of the Woodhull and Claflin scandal, and the concurrent sentiment of the gentlemen of the church at the first was, that the thing must be a lie, that Mr. or Mrs. Tilton would come out and contradict it, and that it was our duty to wait until they did so. After a fortnight or three weeks had passed, and they did not come out and contradict it, then I think it was the sentiment of many in the church, concurred in by yourself, certainly by me, that it was the duty then of the church and of Mr. Beecher to take hold of the matter.

Q. Are you quite sure about Mr. Beecher's name being brought in in conversation with me, Mr. Bell—about Mr. Beecher doing anything? A. Not about Mr. Beecher doing anything, excepting as through the church.

Q. Was it confined to the church? A. I could not say it was; I think not.

#### WHAT MR. SHEARMAN THOUGHT SHOULD BE DONE.

Q. Now, Mr. Bell, just pause a moment, and think whether in every conversation (since you bring me in every conversation) which I had with you, I did not universally take the ground that Mr. Beecher ought, under no circumstances, to do anything, although I thought that the church ought to do something, and was not that sentiment concurred in by those who talked with you and me? A. Undoubtedly it was, during the first two or three weeks.

Q. No, Sir; and later than that? A. I am not arguing with you, Mr. Shearman. I will answer your questions to the best of my ability.

Q. I ask you to pause, and I will take your recollection? A. I am clearly of the opinion—I am clear in my recollection that the sentiment in the church changed after the first fortnight or three weeks—

Mr. Shearman—Undoubtedly.

Mr. Beach—Wait, wait. Let him express himself. Let him finish his answer.

Mr. Shearman—I don't know about that.

The Witness—Against silence to action, and I cannot clearly remember in regard to your position; but I remember distinctly in regard to myself, that I could not see how any action could be taken by the church, except with the concurrence of Mr. Beecher.

Q. Now, Mr. Bell, you had (I regret to be obliged to make this at all personal to myself)—but you had frequent conversations with me running down to the time of your departure for Europe, had you not, on this subject—had occasional conversations down to May, 1873? A. I cannot recall any; probably I had. I talked with so many members of the church I cannot recall any conversation.

Q. Can you not recall one that I had in the house of Mr. Fitzgerald with you a couple of nights, or one night before you went to Europe? A. If you say I had I have no doubt but it was so,

Sir; I cannot now remember it. If you will give me some point to hang my recollection upon, perhaps it will bring it to me.

Q. You say it was on Saturday? A. Yes, Sir.

Q. And we had prayer meeting on the Friday night before? A. Yes, Sir.

Q. Which you attended? A. Yes, Sir.

Q. And you went around to the house of Mr. Fitzgerald? A. I was staying there, being taken in by kind friends.

Q. You stayed there after giving up your house? A. I stayed there after renting my house.

Q. Don't you recollect my calling on you that evening, and talking with you in the front parlor? A. I suppose I had fifty or sixty friends call on me that evening. I should like to say I did remember your calling, but I really do not. No doubt you did, if you say you did.

Q. The point of it is this: I want to know whether there was ever a conversation between you and me, from first to last, in which I took any other ground than this, that Mr. Beecher ought not to do anything about this case himself; that he ought not to have anything to do with it, although I did change my ground after a while, and say that the church or its officers ought to do something with reference to Mr. Tilton? That is the point. A. It is possible you did, Sir.

Q. Now, Sir—

The Witness—If you will allow me to make a little explanation. The conversation with Mr. Hawkins was with this object: to get the Board of Deacons, of which he was Chairman, to take action.

Q. Yes? A. We thought—I thought, and I think that in that conversation you agreed with me, that the deacons did not understand the sentiment of the church in regard to the matter, that by their then delay and fear they were really doing damage to Mr. Beecher and to the church, and I wished to give him courage to bring the matter into the Board of Deacons, so that the deacons would take action and free the church from the stain that was on it.

Q. That is, to give Mr. Hawkins courage? A. To give Mr. Hawkins the courage to inspire the Board of Deacons with the courage to take up the matter and free the church from the stain—that they didn't understand the sentiment of the church.

#### MR. TILTON TO BE CALLED TO ACCOUNT, NOT MR. BEECHER.

Q. Now, Sir, was not the idea that was entertained and expressed at that time simply the idea of bringing Mr. Tilton to account, or Mr. Tilton and Mr. Bowen? A. None of us had the shadow of a thought in our mind that Mr. Beecher was guilty at that time. We could not bring anybody else to account, except somebody else beside him.

Q. This is what I want to come at. Was not this idea that there was to be a Deacons' meeting to be held, necessarily accompanied with the belief that it was intended to be an attack on Mr. Tilton, and not on Mr. Beecher? A. No, Sir; I think that the idea in our minds as to the necessity of having a Deacons' meeting was in regard to the whole scandal, and freeing the church from the stain.

Q. What was the stain? Was it not the presence of Mr. Tilton in the church that was talked of as the stain? A. No, Sir; it was the charges made in the Woodhull and Claflin paper.

Q. Was it not the thought that a member was supposed to be in the church—that a person was supposed to be a member of the church who was responsible for the stories that was regarded as the stain? A. No, Sir; that we had felt for a year before—or 12 months—18 months before, that Mr. Tilton ought not to be a member of the church, and we felt aggrieved about that; but the special feeling that we had at the time of that conversation on Friday night was consequent upon the publication in the Woodhull and Claflin paper.

Q. Was it not on account of the failure of Mr. Tilton to deny that publication? A. Certainly, because we had been looking for Mr. and Mrs. Tilton to deny it, and they did not.

Q. Was there any one in that church that cared what was said in the Woodhull and Claflin paper independent of Mr. Tilton? A. Certainly, there were a great many—hundreds.

Q. You and I were not among that number, were we? A. Yes, Sir, we were, both of us.

Q. Do you want to say that any of us attached any importance to what was in that paper, except on account of the failure of Mr. Tilton to deny it? A. I attached importance to that, as I would to any slander, no matter how false it might be, published in a paper of wide circulation, as it goes to a great many people who will not take the pains to investigate it, who will never hear the denial of what their opinions were formed by, and never will unform them again. I attach importance to every slander that is—

Q. At the time that you and I and the other gentleman agreed that no notice should be taken of this paper, was it not generally understood and talked of between us that over fifty thousand copies of that paper had been sold? A. Yes, Sir.

Q. And yet, notwithstanding that, did not we all agree that it was to be treated with contempt? A. Because we understood certainly—at least we expected certainly—that Mr. and Mrs. Tilton would come out and deny it.

Q. And if Mr. and Mrs. Tilton had denied it no one in the church would have attached any importance to it?

Mr. Fullerton—That we object to.

Judge Neilson—That is a mere opinion.

Mr. Fullerton—It is less than an opinion.

Mr. Shearman—This is all matter of opinion.

Judge Neilson—I thought it proper the examination should be very free, but, as it is objected to, I think this question calls for a general estimate, which is not in keeping with the ordinary rules of evidence. I don't think the question is proper.

Mr. Beach—I do not understand upon what principle the sentiment of the Church or the declarations of members of the Church, at a particular period of progress of this scandal, becomes admissible in evidence as against us.

Mr. Shearman—You introduced them.

Mr. Beach—No, Sir, we did not introduce them. We introduced the official action of the Church, but the lay understanding and the understanding of the congregation have not been at all referred to on our examination. Still, the subject has been

opened by your Honor, and I have submitted to the ruling; but to call from this gentleman for an opinion or judgment in reference to a particular stated case, to a simple supposition of fact—hypothesis—it seems to me is entirely inadmissible, although, from his intelligence upon the stand, I don't know that we make any objection; we are perfectly willing to take it.

Judge Neilson—I thought it was well to learn the general sentiment as far as we have gone, but I don't think that any witness can say upon a certain day the members and the Church would have a certain frame of mind in regard to it. I don't think he can answer that.

Mr. Evarts—If your Honor please, it is only in the nature of an examination, that proposition we are seeking to prove by him, which may be true or untrue.

Judge Neilson—How can any gentleman say what impression people would have in a certain event?

Mr. Shearman—We can change the form of the question, and see whether the objection will be made to it then. It is not material, in regard to the other matter I am going to suggest, whether objection be made. [To the witness]: I ask you then, Mr. Bell, in place of that question, do I not understand you to say that importance was attached to this paper by the members of the Church only because of the failure of Mr. and Mrs. Tilton to come out and deny it.

Mr. Beach—He answered that question several times.

Judge Neilson—Let him answer it.

The Witness—Importance was attached to the paper at the first on its publication. We had waited from day to day for the expected denials from Mr. and Mrs. Tilton. After a sufficient length of time, in our opinion, had gone by for these denials, then that feeling began to change. The importance of the paper still was not taken away.

Q. Mr. Bell, were you not present at a meeting of prominent members and officers of the Church on the Tuesday evening before this Woodhull scandal became public, when the subject was brought up to notice, and some consideration was had as to what action should be taken? A. Before it was published?

Q. Yes, Sir. A. What do you mean by "before." I didn't know it was going to be published.

Q. Before the paper was actually placed on sale? A. The first I knew of it was—I don't know whether it was on Tuesday, the day on which a gentleman called at my house and asked me to meet others at the Church that evening in regard to this publication. I attended that meeting, if that is the meeting you alluded to. I thought it was Thursday night, but if it was Tuesday—

Q. Mr. Beecher was not present at that meeting, was he? A. No, Sir.

Q. Was it not uniformly agreed at that meeting that the true policy of the Church, in meeting and out of it, was not to allude to this scandal at all, and that it would be considered a degradation on our part to do so? A. I don't know about the degradation. I can speak about the policy. It was considered the policy of the Church to take no notice whatever of it.

Q. Was it not put upon the ground that the source from which it came was such as to make it unworthy of attention?



A. That was a part of the ground. There was another reason, however.

Q. The only method that ever was seriously proposed, so far as you know, in the Church, of meeting this scandal when it was proposed to be met, was by some mode of calling Mr. Tilton to account, was it not, or Mr. Tilton and Mr. Bowen? A. I cannot speak in regard to official action, because I was not a member of the Examining Committee.

Q. But in these talks which were held between officers and members of the Church, such as between Mr. Hawkins, your self and myself? A. Well, Sir, very soon after that I seemed to fall out of the channels of communication.

Q. I am asking what happened when you were in the channels? A. Well, but I got out of it very soon after that time, so soon that I really cannot tell you in regard to what took place after the first of January.

Q. I was not talking about that; I was talking in reference to this particular time when you say I was not present; that is in November. I am talking specially with reference to this supposed deacon's meeting in November, 1872, which did not take place, and was not going to take place, but was supposed to be about to take place. Now, at that time, my question is, was not all the proposition for action that ever was on foot a proposition adverse to Mr. Tilton? A. I know of no proposition for action whatever at that time.

Q. Then we didn't make any. You know of no proposition or action—that we could not have made any on our part? A. We called upon the Board of Deacons to bring the matter into the Board so that action should be taken upon it.

Q. That would be action? A. You speak of after that time.

Q. No; I speak of this very time. A. I understood you to mean after that time.

Q. I mean at this time? A. I say that after that time I seemed to slide out.

Q. I don't care about after that time, Mr. Bell, whether you slid out; I don't know about that? A. I would not call that a proposition for action, Mr. Shearman. It was telling the Chairman of the Board of Deacons the feeling in the Church—the demand that there was in the Church for action, and trying to give him backbone to bring it into the Board of Deacons, and to give them backbone to carry it through.

Q. None of us had any idea that anything would be done otherwise than by making an attack upon Mr. Tilton, had we? A. I cannot say in regard to that; it was not clear in my own mind how it could be done.

Q. Now, did you not understand Mr. Beecher, in dissuading the holding of this Deacons' meeting, simply to oppose a measure of attack on Mr. Tilton? A. No, Sir; I don't think he indicated that in the conversation, and I didn't understand it from any other source.

Q. The point is whether there was anything on foot in the church at that time which Mr. Beecher could have dissuaded you or others from doing, except something that would have been hostile to Mr. Tilton? A. I suppose any action whatever would have been considered hostile to Mr. Tilton.

Q. Precisely? A. Any action.

Q. Precisely? A. Even against Mr. Beecher personally.

Q. Well, you put in those words "against Mr. Beecher personally," and it obliges me to ask you once again whether it is not a fact that at that time no one of the church, so far as you knew, dreamed of any action against Mr. Beecher personally? A. I do not think they did, Sir.

#### MR. BEECHER'S COUNSELS BEFORE ADVISING SEPARATION.

Q. Now, Mr. Bell, I want to ask you whether you had an interview with Mr. Beecher in November or December, 1870? A. I had frequent interviews with Mr. Beecher, Mr. Shearman.

Q. Did you have an interview in which the subject of Mr. Tilton's family was brought up?

Mr. Fullerton—I object to that, Sir.

Judge Neilson—Is it one that has been inquired into?

Mr. Fullerton—Oh, no, Sir.

#### ARGUMENT OF MR. SHEARMAN.

Mr. Shearman—May it please your Honor, I offer this evidence in this point of view. A great deal of evidence has been put in on the other side to show that Mr. Beecher had—well, I was going to say a great deal of evidence had been put in to show that Mr. Beecher had a kind of clandestine relation with Mrs. Tilton, but in reality I can only say truthfully that so little evidence has been put in that there is barely enough to justify me in offering to rebut it; but still something of that kind has been put in. We have also had the question raised—two witnesses have been asked, Mr. Tilton and Mr. Moulton—whether they knew anything about Mr. Beecher's advising a separation, or whether Mr. Beecher ever acknowledged that he had advised a separation between Mr. and Mrs. Tilton. Now, I propose by this witness to show, if I can, that in December, 1870, at the very time when, according to the theory of this prosecution, Mr. Beecher had been maintaining guilty relations with this lady six months, according to the testimony of Mr. Moulton, after he had prayed for help to discontinue those relations, at the very time that Mrs. Tilton was absenting herself from her husband's home—we propose to show that Mr. Beecher was called in to advise upon that question of separation between the husband and wife. Now, one of the very first things that Mr. Beecher did when he was called in to advise—her supposed paramour—as to whether she should separate from her husband, was to call for the advice of his own wife and one of the foremost officers and most respected members of his church. He called upon them to advise upon that question; he called upon them, the very persons who, of all persons on the earth, would have been the last that a guilty man would have asked to advise upon that question. Have I not a right to prove that this witness—as I believe I can prove both of these facts—to prove that Mrs. Beecher was called in to advise upon that question with Mr. Bell, then the Superintendent of the Bethel Sunday-school, then a deacon, then one of the most trusted and honored members of the church, one of the most incorruptible men, who would have struck down Mr. Beecher in a moment if he had known him to be guilty—that he was called in to ad-

wise upon this very question, as to what part Mr. Beecher should take in a quarrel between Mr. and Mrs. Tilton? Why may it please your Honor, is not that a thousand times stronger indirect proof than any proof that has been offered here short of the alleged confessions? Is not that the testimony of a man's acts. Is not the fact that he goes to one of the foremost members of his church, to a man whose firmness and whose courage and whose independence and truthfulness are known to us all, and known to the whole of Brooklyn—that he went to him for advice on such a question, and took his own wife into counsel with this gentleman upon that question—is not that material to be proved? I submit that it is, and I submit that it goes a long way towards breaking down the foundation of the case which the plaintiff has put forward. They have introduced this question of Mr. Beecher's advice about a separation of husband and wife. They have undertaken to prove that he gave no such advice. They have undertaken to prove by his admissions, either express or tacit, that he never did anything of the sort. Now, I want to show that he did, and this is one of the links in the chain to show that; and what is more, it shows emphatically the persons whom he took into that counsel, and shows the absurdity of supposing that if he had been a guilty man he would have selected those two persons of all there were on the face of the earth.

Judge Neilson—The embarrassment is that you inquire as to interviews and conversation.

Mr. Evarts—I will limit the conversation.

Judge Neilson—A conversation that has not been inquired into by the other side, and of course I am subject to control by the rule. You cannot introduce conversations, except such as have been inquired into by the other side.

Mr. Shearman—Why, may it please your Honor, this is an act of Mr. Beecher's; it is an act, and his words are only to be called in so far as they explain. I concede we cannot call for the whole conversation with Mr. Beecher. I propose to prove simply this, that Mr. Beecher called in this gentleman to consult with his wife and himself, that is, with Mrs. Beecher and himself, with regard to the trouble that there was in Mr. Tilton's family, and to show that the question that was then under consideration was Mrs. Tilton's supposed desire, or half desire, or rather her application for advice concerning the question of separation from her husband.

Judge Neilson—I think I am controlled by the rule that you cannot inquire into an interview or conversation, in respect to which they have not asked any question in their absence. I do not see how I can get over that rule. If it was not for that rule, I should be very happy to hear you, of course.

Mr. Shearman—If your Honor please, you have allowed on other occasions—you have allowed them to prove conversations with Mr. Tilton in the absence of Mr. Beecher, so far as was necessary to show the meaning of an act, to give color to the act. There is a great deal of testimony already in with which Mr. Beecher is in no way connected—a great deal—and it has been admitted in order to give color and form to a specific act.

Mr. Fullerton—Yes, after you proved the act.

Mr. Shearman—No, not at all.

Mr. Fullerton—Yes, Sir; in all cases.

Mr. Shearman—It was all proved on the other side. I am talking of the direct examination.

Judge Neilson—Unless the counsel withdraw the objection, as I recommend them to do, I think I am controlled by the rule that prevents you going into an independent conversation in respect to which they have given no evidence.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—Now, if your Honor please, this is the general rule of evidence—and we have insisted upon it ourselves in this trial—that though the opposite party may show conversations of his opposing party, yet, that the party himself cannot introduce his own acts or conversations. That is the general proposition; but when the other side has introduced a situation and a course of action bearing upon, pertinent to, this question, which is the main question, of course, the intercourse between Mr. Beecher and Mrs. Tilton, which is under inquiry here, and when you have that particular state of facts, that it is alleged that in July there came to the knowledge of this husband, plaintiff, an occurrence of infidelity on the part of his wife to her marriage vows, and that Mr. Beecher was her paramour, and that the first notice that we find him bringing of this matter to Mr. Beecher was on this 30th of December, and in the connections there disclosed of his pecuniary and business troubles, following after his demand on Mr. Beecher, on the 26th of December, to retire from the pulpit and from Brooklyn, that comes in as taking place early in that month of December, a separation of this alleged guilty wife from this husband, and a determination to keep separate from him, and a resort to this alleged paramour of hers, her pastor, her friend, the guilty betrayer of her husband's honor, and debaucher of her person; and yet she is the actor in leaving a husband who had such a fact against her, and she resorts to this guilty pastor for advice concerning a question very suitable to present to a pastor, but very unsuitable to present to a paramour; that then that pastor takes it up, and deals with it as a responsible and solicitous matter of advice concerning the relations between a husband and wife in his parish, and makes it, as a pastor should, having a wife, a matter rather to be submitted to her judgment, her solicitude and her affection, towards a woman of the church, and an important, upright, intelligent, clear-headed leader in the church, to meet this unhappy situation, in which a woman needed this delicate and responsible advice. Now, that it is competent for us to show, in the course of Mr. Beecher's relations with this woman, which he will be permitted to disclose from beginning to end, this little occurrence early in December, before the business and pecuniary troubles of Mr. Tilton had raised movement on his part, of a hostile movement of the wife to separate herself from such a husband, and of the counsels that then were resorted to to determine that matter; as Mr. Beecher can testify to that, so any witness that can testify to his action in the face of, and as a part of that situation, can give evidence, as we submit, concerning it.



## GENERAL DISCUSSION.

Judge Neilson—You can prove Mr. Beecher's acts in that regard, no doubt.

Mr. Evarts—Well, we will try to limit it to that.

Judge Neilson—But it don't relieve me from the embarrassment arising from the rule. You propose to inquire into a conversation in respect to which the other side have made no inquiry.

Mr. Beach—We are embarrassed by the suggestion, Sir, which your Honor makes to us, of the propriety on our part of withdrawing this objection. I do not exactly understand the feeling, Sir, or motive which prompts that advice. I do not know any reason why we should waive a legal and substantial objection to evidence of declarations upon the part of Mr. Beecher, of which we had no knowledge, and in regard to which we can give no proof; and acting, Sir, on behalf of the interests of our client, and judging of the propriety of this evidence as well as we can, with the utmost respect for your Honor's intimation, we do not feel at liberty to withdraw this objection.

Judge Neilson—Well, Mr. Shearman, the question is disallowed.

Mr. Evarts—We will prove the acts, then, of Mr. Beecher.

Mr. Fullerton—That is not within the ruling of the Court, by any means.

Mr. Shearman—Were you called in by Mr. Beecher in the last of 1870, to a consultation with his wife in reference to the affairs of the Tilton family?

Mr. Fullerton—I object to it.

Judge Neilson—I think we will take that, Sir, the mere fact that he was called in.

Mr. Beach—What, Sir, upon the subject—upon a certain subject?

Mr. Shearman—Certainly, Sir.

Mr. Beach—Certainly, Sir! I trust your Honor will permit no evasion of the rule.

Mr. Fullerton—It is not pretended, it cannot be pretended that we have instituted any inquiry upon our part as to anything that took place in December, 1870, prior to the 26th day of that month. They are not calling out, therefore, from this witness anything in connection with the testimony that we have given, at all. It is a new subject entirely. It points to another and a different occasion, prior in time to any that we have examined about. Now, even if they had a right to give that interview in evidence, which took place early in December, 1870, to which the witness on the stand was a party, they could only do it in giving their defense to this action, after our case is closed. That rule is familiar with your Honor, and ought to be enforced in this case. But your Honor will perceive that the question in this case is a leading one, as has been suggested by my associate.

Judge Neilson—And embodies the subject matter of the interview.

Mr. Fullerton—It embodies the subject matter of the interview, in the question.

Mr. Beach—Yes, Sir; they get the whole effect of the interview, Sir.

Mr. Shearman—I don't ask what was said.

Mr. Fullerton—Oh, no; you only characterize the interview.

Mr. Beach—Yes, Sir; they ask what Mr. Beecher said about calling him into the conference, and they can get that in no other way, except by getting the declarations of Mr. Beecher.

Judge Neilson—I will overrule the question. I see nothing else to do except that. Go on, Mr. Shearman.

Mr. Evarts—Do you overrule the question?

Judge Neilson—Yes, Sir.

Mr. Evarts—I understood your Honor to say—

Judge Neilson—I was inclined to, but on the objection being persisted in, I think I am bound to sustain the objection.

Mr. Evarts—I understood your Honor to hold that while the rules of evidence may not entitle us in the present stage of the matter to conversations that occurred, we may prove Mr. Beecher's acts in reference to this matter of the wife's resort for advice on the subject of separation.

Judge Neilson—When that subject comes up, you will be at liberty to recall this witness if you wish to.

Mr. Evarts—The subject has come up, if your Honor please, and in their direct examination.

Mr. Fullerton—There the counsel is mistaken.

Mr. Evarts—Well, the interruption might have been spared if you had heard me. It formed a part of the conversations between Mr. Beecher and Mr. Moulton that were given in evidence by the plaintiffs, to wit, the advice, intervention, that Mr. Beecher had made in these matters of the wife's concern. That was the situation on which Mr. Beecher was approached in the end of December, in relation to Mr. Bowen's affairs with Mr. Tilton, and his relations to this controversy between Mr. Tilton's wife and her husband that had resulted in the separation and the resort for advice; and I think one of the letters in evidence, and put in evidence by the other side, speaks of a conspiracy between Mrs. Beecher and Mrs. Morse to procure a separation between Mrs. Tilton and her husband—two letters produced by them, letters of Mrs. Tilton, I think, brought by her husband as a part, not narrative letters, but letters that were parts of the acts of this drama that was going on, the conspiracy of Mrs. Beecher and Mrs. Morse to get a separation; and it had been made the topic of conversation as to what Mr. Beecher had done, Mr. Beecher's regrets, his fears, his troubles, was all his intervention. It is in evidence, somewhere, that Mr. Beecher said, in one of these conversations with Moulton which they gave evidence of, and with Tilton, which Tilton gives evidence of, that he had done mischief in that regard, if you please, in the view that he then had of the matter, but not so much as some others, meaning Mrs. Beecher. Now, all that being in evidence, we are not to be permitted to prove what the action was in this situation, produced by this wife's separation from her husband and resort to her pastor, and his dealing through a leader of the church, and his own wife, in that question.

Judge Neilson—Or rather, you are not permitted to give an independent conversation had with this witness.

Mr. Evarts—I have not asked the conversation.

Judge Neilson [Continuing]—In respect to which no inquiry has been made.

Mr. Evarts—We have, at last, under your Honor's direction, limited it to the action that was taken by Mr. Beecher, in calling this gentleman into the counsels sought for by this wife.

Judge Neilson—You could not call him in except by word of mouth, or by letter.

Mr. Morris—Will your Honor allow me to inquire what question is before the Court?

Mr. Evarts—Your Honor has abundantly in the course of this trial allowed the question on the precise ground that you could not show how the man was called in, except by showing the word of mouth.

Judge Neilson—This question is overruled, Mr. Evarts.

Mr. Shearman—Your Honor will note our exception. [To the witness.] Did you become aware, in the early part of December, 1870, of a difficulty between Mr. and Mrs. Tilton, in respect to which Mr. Beecher had been in any way consulted?

Mr. Fullerton—That is objected to.

Mr. Beach—We object to that question.

Judge Neilson—I think we will take it.

Mr. Beach—Sir?

Judge Neilson—General knowledge. I think we will take it.

Mr. Beach—General knowledge?

Judge Neilson—Yes, Sir.

Mr. Beach—Knowledge derived from hearsay?

Judge Neilson—Yes, it may be. I think we will take that.

Mr. Beach—Will your Honor please consider upon what rule you permit a witness to give hearsay?

Judge Neilson—He has been giving it ever since he has been on the stand.

Mr. Beach—Sir?

Judge Neilson—He has been giving it ever since he has been on the stand.

Mr. Beach—Yes, but he has been giving it because the action of the church was so directly connected with very much of the examination that we gave. We went into the proceedings of the church, and in some degree into the history of the actions and intentions of the church authorities, and of the congregation, in regard to that matter. But this presents altogether a different question, may it please your Honor. It asks this gentleman whether he became aware by hearsay and the gossip of this neighborhood, or by the declaration of Mr. Beecher, or Mrs. Beecher, or Mrs. Morse, that there were difficulties existing in the family of Mr. Tilton. Now, your Honor, that is an important question in this case whether or not those difficulties did exist. It is a question of fact to be settled by the ordinary evidence applicable to all issues in a court of justice. Mr. Tilton is not to be condemned for brutality and unkindness in his family; for neglecting the interest of his household circle upon the gossip of the street or the hearsay of Mr. Bell or any other gentleman, however respectable and intelligent. It is a fact, I submit to your Honor, to be established in the ordinary way, and this question in its general form allows this witness to answer as to the means of his knowledge of a particular circumstance

connected with Mr. Tilton which may have been derived from Mr. Beecher or any other person in the highways.

Judge Neilson—And without any personal knowledge.

Mr. Beach—And without the slightest personal knowledge.

Judge Neilson—Mr. Shearman, let me hear you in support of your question.

Mr. Evarts—Why, if your Honor please, it does not prove the truth of there having been a difficulty. How often have we had this distinction brought out? In order to get the proof that you are entitled to, you need to show a situation in the mind of a party, not proving that that was a true circumstance but as the precedent inducement to reach the allowable evidence that can be given. I do not say that rumor there was trouble between Mr. and Mrs. Tilton shows there was any trouble; I have never been guilty of such folly as that in this Court or in any other Court. But when I have a right to the actual transaction that occurred, and when as an inducement of that it is that a witness knew there was a story or a rumor that there was a difficulty, and then we lead to the proof; that is the first step, and if it has been done once it has been done a hundred times in this case before your Honor, and on the same rule that your Honor suggested that this was allowable.

Judge Neilson—This witness took no action in the matter, I suppose.

Mr. Evarts—I don't know that.

Judge Neilson—It is not suggested that he did.

Mr. Evarts—I cannot suggest what was done. Your Honor was disposed to allow this question. Similar questions have been allowed a hundred times in the trial of this cause. We all understand they do not prove there was difficulty between Mr. and Mrs. Tilton, but that it proved the fact that he was aware of a situation of alleged difficulty, and thereupon certain action took place. There is no doubt of the fact that she separated from him; there is not any doubt of it, on Mr. Tilton's own testimony, that she was gone three days. Whether her mother procured it, whether Mrs. Beecher procured it, that is not the question; of the fact there is no doubt. He sent for the child in the absence of the mother, and the mother never came back until the child had been gone. Now, those are facts of the matter. Now, I ask if this witness was aware of that situation as an inducement and a basis of showing what action he was called upon to take and did take in the matter.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—I don't know anything that counsel has said that is at all pertinent to the question before your Honor. How did this question arise? "Why," they say, "you proved by Moulton and by Tilton that they never heard from Mr. Beecher of any advice given to him by Mrs. Beecher on the subject of difficulties or separation from her husband, and because you have given that evidence," they say, "we are entitled to prove the action of Mr. Beecher in that direction, showing that he did give such advice; that he called in his wife and this gentleman in consultation as to the character of the advice he should give to Mrs. Tilton. Well, Sir, that was an act which could only have been pertinent, if the evidence was



competent, for the purpose of proving the fact of the intervention of this defendant between this plaintiff and his wife, as an explanation of the letters, the apologies and the contrition which Mr. Beecher manifested toward Mr. Tilton. It was to give an occasion and a plea and foundation for those letters, which, we say, impute a certain offense, and which they attempt to modify by showing a relation between them and this intervention of Mr. Beecher. Now, the gentleman is driven from his position. He says: "I don't offer this evidence for the purpose of proving the fact; I don't offer it to establish before this Court and jury that there were these fundamental difficulties between those parties which led their pastor to interfere with advice to the wife hostile to the husband." Now, I don't pretend that they prove that fact. What is the materiality then, Sir? Of what importance to us is it upon this issue whether or not this gentleman understood publicly, by rumor or otherwise, the fact of the existence of these difficulties if the evidence is not to establish the fact itself? In receding from his position the gentleman falls upon the other difficulty of utter immateriality in this case. Now, the gentleman says that this sort of evidence has been given in a hundred instances. Never in one, Sir, in this case. Never has your Honor received this hearsay evidence; never has your Honor permitted proof of unfounded rumor in this case for the purpose of establishing any important and material issue like this, upon this trial. It is of some consequence to us, Sir, whether we are to be scandalized by these rumors which were floating in this community originating from sources of which we know nothing, and whether the rights of this plaintiff in this case are to be sacrificed by the gossip of this community. We asked to be tried here, Sir, upon legitimate evidence admitted by your Honor under the acknowledged principles of law, and we ask your Honor to hold the proof upon both sides in this case to the rigor of those regulations.

Mr. Evarts—My learned friend says—

Mr. Beach—I believe I have the close of the argument.

Judge Neilson—He has a right to make a correction if he desires.

Mr. Evarts—Yes; he says I have receded from something. I have receded from nothing.

Mr. Beach—Well, you are about succeeding to something. Now, the gentleman enforced upon me the rule, Sir, that he had the right to close.

Mr. Evarts—Yes, Sir, and you shall have the right after me.

Mr. Beach—Well, I don't ask anything from the concession or indulgence of the counsel in that respect.

Mr. Evarts—Very well; you will take it from your right.

Mr. Beach—What?

Mr. Evarts—You will take it from your right. I am not giving a concession.

Judge Neilson—[To Mr. Beach.] You have a right to close. Mr. Evarts has a right to make an explanation.

Mr. Beach—Well, it will take him considerable time to make those corrections.

Mr. Evarts—Your right to close don't mean a right to close my mouth.

Mr. Beach—No; that would be an undertaking I would hardly venture upon.

Mr. Evarts—Well, we will go on. I say the present question does not undertake to prove the truth of the fact. I do not say that I do not undertake to prove the truth of the fact; I do not undertake to prove it by this question. And when I say a hundred times I mean exactly what I say—not but that it might be a hundred and one, possibly. I mean exactly what I said: that your Honor knows and enforces the rule to be that it is not an objection, that it is hearsay evidence that you are proving a fact by; that you introduce a hearing to a witness of something that had happened, which is proving the fact that he heard it, and then, that fact having been introduced, of its having got into his ears, is the inducement to what follows.

Mr. Beach—Now, your Honor, you have ruled in this case that this interview between Mr. Beecher and this gentleman is not admissible evidence. You have ruled that the declarations of Mr. Beecher made upon an occasion at which we were not present and to which we have not alluded in our evidence are not admissible proof. And yet, you are asked to permit a question which shall allow this witness to found an answer upon the hearsay conversation in the streets between third persons. While you shut out the declarations of Mr. Beecher, all interviews and conversations with Mr. Beecher upon this subject, to which we have made no allusion in our evidence, yet you allow this witness in his testimony to rove with the whole public, and from whatever source he may have received information in regard to a given fact, to detail it in this Court as evidence.

Judge Neilson—Or state the substance or conclusion.

Mr. Beach—Yes, Sir. Now, I trust your Honor will be consistent in the application of principles. They are founded, Sir, upon reason.

Judge Neilson—That may be difficult.

Mr. Beach—I don't think it is difficult.

#### THE OBJECTION SUSTAINED.

Judge Neilson—But I must not allow this question, I think on the whole. I would like to see the evidence taken without much technical objection, but this is substantial. I think I cannot allow it. Proceed, Mr. Shearman.

Mr. Evarts—Note an exception, if your Honor please.

Mr. Shearman—I ask this question. Mr. Bell, were you called in by Mr. Beecher in the early part of December, 1870, to a consultation between him and Mrs. Beecher, concerning a meditated separation between Mr. and Mrs. Tilton?

Mr. Fullerton—Objection, Sir.

Mr. Beach—That is the same question.

Mr. Fullerton—Same thing as has been ruled out.

Judge Neilson—The question is disallowed.

Mr. Shearman—Your Honor will note us our exception. I ask this question. [To the witness.] Did you not, in the early part of December, 1870, take any part in a consultation with Mr. and Mrs. Beecher, either with or without Mrs. Tilton, concerning a meditated separation of Mrs. Tilton from her husband?

Mr. Fullerton—That is objected to, Sir.

Judge Neilson—Ruled out.

Mr. Shearman—Note exception.

Mr. Fullerton—Our objection is two-fold, your Honor will remember.

INDEPENDENT CONVERSATIONS MAKE MORE TROUBLE.

Mr. Shearman—Mr. Bell, did you have an interview with Mr. Beecher in the last week of the year 1870 or thereabouts, in which Mr. Beecher told you that Mr. Bowen was going to dismiss Mr. Tilton from *The Independent* and *Union* on account of certain stories concerning Mr. Tilton unfavorable to his moral character, the substance of which Mr. Beecher then stated to you?

Mr. Fullerton—Objected to.

Judge Neilson—Ruled out.

Mr. Shearman—If your Honor please—

Judge Neilson—Well, independent conversations which have not been inquired into, mere conversations, cannot be received.

Mr. Shearman—One moment, if your Honor please; we offer this for this purpose—the plaintiff has put in evidence certain letters of Mr. Beecher; he has put in evidence a paper to which Mr. Beecher's name appears, though it is not signed by him, and which the plaintiff calls a letter of contrition sometimes—sometimes an apology. Now, that paper and the other similar papers are put in for the purpose of showing that Mr. Beecher was deeply penitent for something. Have we not a right to show for what Mr. Beecher was penitent?

Judge Neilson—Oh, you will before you get through.

Mr. Shearman—For what he did apologize?

Judge Neilson—Of course.

Mr. Shearman—Have we not a right to show, on cross examination, by their witnesses?

Judge Neilson—No one doubts that you can show that and give it its full weight; but, equally, no one can doubt that you cannot inquire into an independent conversation of this witness on that subject, or any other subject.

Mr. Shearman—How are we to do it?

Mr. Beach—You have got Mr. Beecher to do it with.

Mr. Evarts—Mr. Beecher gives, of course, on his consciousness and knowledge. But for the frame and situation, concerning which he spoke, that is one thing. Whatever may be proved may be proved by two witnesses, if it may be proved at all, if there are two who can prove it. Now, the substantive fact that Mr. Beecher had in this early part of the last week in December said these things injurious to Mr. Tilton, and prejudicial to his interests, is a fact—it is a fact and act of Mr. Beecher's. It don't prove that Mr. Tilton was guilty of this, that, or the other, but it proves that Mr. Beecher had said to this responsible and important person in the circles in which they both moved, these things, and we are not obliged to depend entirely upon Mr. Beecher's testimony for the proof of these facts. Whether anything will come of the fact is dependent upon subsequent testimony, and we cannot prove everything at once, nor everything by the same witness. Let it be, that nothing comes of this isolated act of Mr.

Beecher. It is an act of his in saying these things to the injury of Mr. Tilton, whether they were true or false, to the prejudice of him to this witness; and that fact stands proved, then, if we are allowed to prove it; and then the rest of our course of proof takes hold of that fact. And it becomes a subject of regret, when Mr. Moulton has removed an impression from Mr. Beecher's mind, that there was any truth in these stories, that he should have done these rash, inconsiderate and injurious acts in respect to his disciple, Mr. Tilton.

Judge Neilson—If the conversation proposed is an act or a fact, then every conversation may be inquired into as an act or a fact, and we overlook a rule which restrains the Court and controls, and cannot be changed except by legislative act, to wit: that you cannot give in evidence a conversation had by your client with a witness in the absence of your adversary, unless they have inquired into that interview.

Mr. Evarts—If your Honor please, if a man's general letter of remorse is to convict him of a crime of arson, shall he not be at liberty to prove that he had committed a crime of burglary, and that was what he was talking about.

Judge Neilson—That is a very different matter.

Mr. Evarts—That is the very thing.

Mr. Beach—It is not as to proving the fact: it is the mode of proving it.

Mr. Evarts—The fault was, saying these injurious things; and it was concerning that that he was speaking—if that is an element in the matter. I am not now arguing the case. It is not to be attributed to me that I say that that is all there was in it. I am to prove my case in the parts of which it consists. Now, that presents it precisely; there is not any difference that one crime is burglary, when they are trying to convict him of setting fire to the dwelling house by general feelings of remorse. This is a fault that a person of a sensitive conscience and a kind heart, no doubt would feel. Your Honor would feel it; every gentleman would feel it, if he, under the provocation of such a missile hurled at him as that message of the 26th of December, under Mr. Tilton's name—had then given body and force to rumors and reproaches against Mr. Tilton, and had advised that they should be executed in stripping him of his employments and then, afterwards, somebody had come and said to him that all those stories were false, and that he should not have given any such advice, and trusted to them. He may have this or that degree of feeling on the subject. It's not for your Honor or for me to measure the course of feeling that a man is led into by finding his course open to self-reproach and contrition. The question is whether I can prove the fact that I wish to interpose as the basis of part of our case. Now, if he had not committed the crime of burglary then it would be impossible to impute generalities of confession to another crime and not to one that he was not guilty of. And here if there had been no such act and fact as this decisive and oppressive forcing against Mr. Tilton of conclusions, or rumors, if you please, then there would not be the opportunity of applying generality of anguish to this or that form of inquiry and not another. And, in order that that may not be imputed as the defect or fault of our case in that regard, and its argument,



we propose the existing fact of his having dealt with this witness in this way.

Judge Neilson—Counsel, I think, may appreciate the restraint I feel under in reference to what I understand to be a settled rule of evidence, and in respect to which I have no power or authority, regarding, as I must, this interview with the witness as involving a conversation that has not been inquired into; and the question is therefore overruled.

[To the Jury] : Gentlemen of the Jury, I wish to say that we have been thoughtful enough to send down to Parker's and have the room where you dine warmed, to be comfortable. Persons who ordinarily desire to stay in this room will find it uncomfortable during the recess, because the windows will be all opened; and it will be as near remaining out of doors as possible to stay here.

Mr. Evarts—Your Honor will note my exception. [Laughter.]

The Court then took a recess until a quarter past two o'clock.

#### THE WITNESS MAKES AN EXPLANATION.

The Court met at 2:15 p. m. pursuant to adjournment.

The Witness, George A. Bell, on taking the stand addressed the Court: If your Honor please, I have remembered other parts of the interview on which I was examined.

Judge Neilson—You have a right to answer.

The Witness—At what point, Sir?

Judge Neilson—At any time.

Mr. Shearman—We are through on the cross-examination.

Judge Neilson—The witness recollects some parts of the interview which he wants to add.

Mr. Fullerton—Certainly, Sir.

Judge Neilson—In your own way, Mr. Bell.

Mr. Evarts—It does not come out on our cross-examination.

Judge Neilson—No, it comes out in the way of explanation by the witness.

The Witness—There are one or two points that have come to me during the recess, and they are these.

Mr. Evarts—Your Honor will understand us as objecting to this on the same ground that we have before stated.

Judge Neilson—Certainly.

The Witness—Mr. Tilton said, in the interview when I drove him up, in regard to the publication which I insisted he ought to make—he said that Mr. Beecher had committed an offense against his family. These words come to me very distinctly—that Mr. Beecher had committed an offense against his family which he declined to specify or characterize, or some such words as that. He stated also that Mrs. Tilton was pure—using some very strong language in regard to that. I am merely now giving you the things which I remember that I had omitted. He said besides, alluding to the anticipated meeting of the deacons, "If the deacons, or if the Church, want to investigate this thing I am ready, but you had better go to Mr. Beecher, and if he says he is willing that the Church should go on, then go on." That is about the substance of what he said.

#### RE-DIRECT EXAMINATION OF MR. BELL.

Mr. Fullerton—Mr. Bell, you spoke on your cross-examination of having fallen out of the channels of communication after a certain period. What did you mean by that expression? A. Did I not say channels of information, Sir?

Q. Perhaps so. A. That is just what I meant.

Q. Well, perhaps so. Was that in consequence of your absence from the city? A. No, Sir; because I did not go away from the city until May following.

Q. You were not consulted in regard to it? A. I was not consulted.

Q. What position did you take in regard to the matter prior to the time of your having fallen out of the channels of information?

Mr. Evarts—That we object to—the question of the position that this gentleman had taken. It is of no consequence what attitude he took in the fight, if there was one.

Mr. Fullerton—They have proved public sentiment in Plymouth Church in regard to this matter. They have enjoyed the widest liberty of examination in that respect. Now, if this gentleman fell out of the channels of information after that, I propose to show why it was.

Judge Neilson—Suppose that he had expressed an opinion upon the subject; that would not be material.

Mr. Fullerton—It would, if your Honor please, in my estimation, in regard to this fight in the Church.

Judge Neilson—No; I think not.

Mr. Fullerton—If he advised a certain course should be taken, and others in the Church advised that another course should be taken, that would show the reason why he was not consulted afterwards in regard to the affairs.

Judge Neilson—That may be so as to the reason; but it is not important.

Mr. Fullerton—Well, I do not regard it as very important. [To the witness]: You were going on to state, Mr. Bell, that there was another reason for the meeting at Mr. Halliday's house, other than the one disclosed. Am I right in that? A. Another reason for meeting at Mr. Halliday's house?

Q. Yes. I understood you to say upon cross-examination that there was another reason for meeting at Mr. Halliday's house other than the one stated by you?

Mr. Beach—No, I understand him to say. Mr. Fullerton, that there was another reason for the lethargy of the Church, or the refusal of the Church to move during the first two weeks.

Mr. Fullerton—Well, perhaps I was mistaken. Then I have nothing more to ask, because that has been already explained.

Judge Neilson—Is that all from this witness?

Mr. Fullerton—That is all we have to ask.

Mr. Evarts—That is all, Sir.

#### TESTIMONY OF JOSEPH H. RICHARDS.

Mr. Fullerton then called Joseph H. Richards, who was duly sworn, and was examined as follows:

Mr. Fullerton—Where do you reside, Mr. Richards? A. At Montclair, New-Jersey.

Q. Did you ever reside in this city? A. Yes, Sir.  
 Q. During what period of time? A. About ten years ago.  
 Q. How are you, if at all, connected with the family of Mr. Tilton? A. Mrs. Tilton is my sister.  
 Q. Have you spent more or less of your time in Brooklyn, since you moved to Montclair? A. Rather less than more, Sir; I have been here seldom.  
 Q. Were you in the habit of visiting Mr. Tilton's house when you were here in Brooklyn? A. Yes, Sir.  
 Q. How frequently? A. Possibly, during the whole time, not to average more than once a month.  
 Q. During what period? A. The ten years.

THE TILTON HOME A MODEL ONE.

Q. Whilst you were there, Mr. Richards, did you notice, and if you did you will please state to us, what degree of affection existed between the husband and the wife in that family? A. Well, Sir, I always considered that the home of Mr. Tilton was a model home in that respect as in other respects.

Q. Did you ever see anything to the contrary during your visits there? A. Not certainly until the last two or three years.

Mr. Evarts—I understand the rule, if your Honor please, is that it must be limited to the period antecedent to the alleged cause of the estrangement

Judge Neilson—Yes.

Mr. Fullerton—Prior to July, 1870—

Mr. Beach—Put it December, 1870.

Mr. Fullerton—Well, prior to December, 1870.

Mr. Evarts—July, 1870, it was alleged.

Mr. Fullerton—Well, it was not made known until December, 1870.

Mr. Evarts—It was alleged to be known to the husband in July, 1870.

Mr. Fullerton—Well, prior to July, 1870. [To the witness]: Prior to July, 1870, was that the condition of things in the family according to your observation?

The Witness—Well, Sir, as to my recollection of dates, the precise time I cannot say; but I should think that would be about the time.

Q. Now, as to the treatment of his family by Mr. Tilton, as to providing for them, what can you say as to that, from your observation? A. I should say it was generous. Sir.

Q. And in his daily intercourse in the family, state whether it was kind, affectionate and agreeable? A. So I should state—loving, kind.

Q. How was he for cheerfulness in the family? A. Well, for the most part, I should say he was rather too cheerful, Sir, if anything—fond of joking and punning, sometimes at the expense of others—my own expense sometimes.

Q. All in good nature? A. Yes, Sir.

THE WITNESS'S ACQUAINTANCE WITH MR. BEECHER.

Q. How long have you known Henry Ward Beecher? A. I should think about eighteen years, Sir.

Q. Did you see him frequently during your residence in

Brooklyn? A. Yes, Sir; but more often in New-York City on business matters.

Q. What business matters in New-York city brought you in connection with him, if any? A. I was publisher of *The Independent* for eight years, and there I saw him frequently.

Q. During what eight years? A. You puzzle me, Sir, about dates.

Q. As near as you can get at it—I am not particular? A. I should think probably fifteen years ago my connection with *The Independent* ceased, and prior to that time I saw him, probably, during the eight years prior to that date.

Q. And since you moved to Montclair have you seen him frequently? A. Not frequently. No, Sir.

Q. Where have you been in the habit of seeing him during your residence in New-Jersey? A. I have met him in the street often, and seen him occasionally at my sister's house.

Q. Mrs. Tilton's? A. Mrs. Tilton's; I should think that would confuse them all, Sir.

Q. How often did you see him at your sister's house? A. I cannot say, Sir.

Q. Give us an estimate, as near as you can, of the number of times? A. Well, it would be difficult to state; I should think probably five or six times in the course of those years.

Q. And when did that occur—during what years? A. Well, I probably met him first when the family lived in Oxford-st. If you can give me that date, Sir, it will recall the time when I met him in Brooklyn at their house.

Mr. Fullerton—That is already in evidence.

Mr. Beach—1862, or about 1862, I think.

Mr. Fullerton—And when again? A. More often in Livingston-st., probably.

Q. Where they resided up to the time that she left her husband's house? A. Yes, Sir.

Q. Were you there when you saw him visiting your sister or calling upon her? A. Was I calling upon her?

Q. Yes. A. Yes, Sir.

Q. What times in the day have you seen Mr. Beecher there? A. I recollect of seeing him there in the forenoon of the day; I don't know how often at that time.

Q. How early in the forenoon? A. Probably as early as eleven o'clock.

Q. And how often as early as eleven o'clock have you seen him there? A. I do not recall but one time, Sir, I think.

Q. And when you saw him there at other times, what time of the day was it, if you remember? A. In the afternoon, probably.

Q. And where did you see him—in what part of the house? A. In the parlor of the house, I think, Sir.

Q. In every instance? A. I don't recall any other locality; possibly it might have been.

Q. State whether Mr. Beecher was in the house when you went there, or whether he arrived after you arrived? A. I cannot state so in every instance; I can state I went there on one occasion and found him there; as to the others I cannot remember.

Q. What was the condition of Mrs. Tilton's health at the



time of these respective calls of Mr. Beecher? A. I don't remember any other condition but that of good health.

Q. Was any other person in the parlor with them when you saw Mr. Beecher, and, if so, whom?

Mr. Evarts—When?

Mr. Beach—On any occasion.

Mr. Evarts—On all the occasions.

Mr. Fullerton—Yes, I embrace the whole.

The Witness—I don't remember; possibly there might have been other persons present.

Q. But you do not remember? A. I do not remember; no, Sir.

#### THE WITNESS DEPLORES HIS POSITION.

Q. Now, at any time when you saw Mr. Beecher at the house of Mr. Tilton in company with Mrs. Tilton, did you see anything exceptional in their conduct or intercourse, and, if so, state what it was?

The Witness [turning to the Court]—Will you allow me to say, your Honor, that in some way, by the exigencies of this case, I am brought to appear in a cruel position. I did not seek this position. I am here from dire necessity, and very reluctantly testifying. This lady is my only sister, and I esteem her as we all esteem our sisters.

Judge Neilson—I recognize that, Sir; the position may be hard; but still you must yield to the requirements of the case, and state what you know.

The Witness—What is the question, Sir?

[THE TRIBUNE stenographer repeated the question.]

The Witness—In answering this question I don't think I can answer it in justice to myself, unless I should put what I saw in connection with other things, with other things that I had heard about Mr. Beecher in my long knowledge of him. What I saw might not be of any special moment, aside from these other things, and it may not be of any moment at all, in any view.

Mr. Evarts—Now, if your Honor please—

Judge Neilson—The counsel will instruct him.

Mr. Evarts—Here is a witness asked what he saw, and he proceeds to give instructions as to what he saw not being of much importance, unless he is allowed to connect it with other things he had heard.

Judge Neilson—The counsel does not ask for that.

Mr. Evarts—No; but I certainly never have heard anything like that from a witness.

Mr. Fullerton—Probably you never saw a witness placed in such a position before.

The Witness—Precisely so; but if you will place yourself in my position—

Mr. Evarts—Oh, I will be able to show what your position is by and by.

#### SUSPICIOUS POSITION OF MR. BEECHER AND MRS. TILTON.

Mr. Fullerton—I will give you that chance very soon. [To the Witness.] Now, Mr. Richards, please to state what you saw there in the house of Mr. Tilton, that was excep-

tional in the character or conduct of Mr. Beecher and your sister? A. Well, Sir, on this occasion I spoke of seeing them in the morning—this one occasion. I called at the house, and was in the upper story—the second story, I think. I descended to the parlor floor and opened the door of the parlor, which was closed, and I saw Mr. Beecher seated in the front room, and Mrs. Tilton making a very hasty motion, and with highly flushed face, away from the position that Mr. Beecher occupied. It was such a situation as left an indelible impression on my mind—that is all, Sir—in relation to other matters.

Q. What season of the year was that in? A. I cannot recall the season, Sir.

Q. Have you no way of letting us know whether it was in the Winter or Summer season? A. I do not see how I can be able to—no, Sir.

Q. Can you tell the year when you saw this? A. No, Sir.

Q. With reference to the ages of the children of Mr. and Mrs. Tilton, would you be able to fix approximately the time when you saw this? A. No, Sir; I cannot recall the ages of my own children except from a memorandum I carry in my pocket.

Q. Was it as early as 1868? A. I don't think you can aid me, Sir, in that matter, in the recollection of dates.

Q. Well, was it a number of years ago? A. Yes, Sir.

Q. Could you tell me whether it was between 1868 and 1870? A. It probably was prior to 1870.

Q. And where did Mr. Tilton live at the time—where was his residence? A. In Livingston-st.; I think 174 is the number.

Q. Will you state whether it was an unusual thing, so far as you observed, that the parlor doors should be shut as they were shut on that occasion? A. I cannot state, Sir; I do not know what the habits of the house were in that regard.

Q. How long had you been in the upper part of the house before you came down and witnessed this? A. I don't remember these side facts about it. I simply called there in the morning, as I had to, living out of the city; I usually called in the day-time.

Q. Can you tell us whether Mr. Beecher came to the house before or after you did? A. I cannot say, as I was up-stairs.

Q. You don't remember of having seen him on your way up-stairs? A. No, Sir.

Q. In what part of the parlor was Mr. Beecher sitting when you first opened the door? A. About opposite the entrance—the front room; about opposite the front entrance.

Q. And how far was Mrs. Tilton from Mr. Beecher when your eye rested upon them? A. Well, she was not far, Sir; in the act of moving; as I opened the door there was a moving away from the position.

Q. Moving away from Mr. Beecher? A. From Mr. Beecher—yes, Sir.

Q. And in what direction was she moving? A. Towards the front window.

Q. Did you remain in the parlor any time? A. Not long, Sir.

Mr. Fullerton—I believe that is all, Sir.

CROSS-EXAMINATION OF MR. RICHARDS.

Mr. Evarts—Mr. Richards, were you subpoenaed here? A. Yes, Sir.

Q. And when? A. [Looking at subpoena]. This is dated the 13th day of February.

Q. My question was, when you were subpoenaed—when it was served upon you? A. On that day, I presume, Sir.

Q. What is your business now? A. I am an advertising agent.

Q. Where do you carry on your business? A. No. 245 Broadway.

Q. When did you speak of this occurrence, and to whom? A. I think I spoke of it first to my wife.

Q. And when did you speak of it to any of the parties to this case? A. I think the day before yesterday.

Q. Now, Sir, what did you say to Mr. Beecher, or Mrs. Tilton when you went into the room? A. I greeted them, Sir, as was my custom; I shook hands with Mr. Beecher, I think, who remained seated.

Q. Had you seen your sister before that morning? A. No, Sir.

Q. Had you come into the house in the usual way, without being announced or introduced to the family at all? A. I used to have free range of the house, Sir, as far as that is concerned.

Q. I asked you exactly that question—whether you came in that morning in the usual way? A. That is exactly as I replied, Sir; I came in in that way.

Q. The usual way? A. Yes, Sir.

Q. And you went up-stairs to your own room, was it? A. I had no room there, Sir.

Q. Well, what room? A. Probably the second story front room.

Q. With what object? A. To see any one who was to be seen.

Q. Was that the usual and ordinary place that you would expect to find your sister? A. Yes, Sir.

Q. Was it this room that had folding doors between it and the bedroom that you went to, expecting to find her? A. Yes, Sir.

Q. That was the ordinary place? A. The sitting room.

Q. The sitting room where you would expect to find your sister, or any family visitor would expect to find your sister? A. I presume so.

Q. Have you said what time of day this was? A. I think about 11 o'clock.

Q. And had you any particular business there, or only a call? A. Simply a call.

Q. Simply a call. And immediately on finding your sister was not up-stairs, did you come down to the parlor? A. It may not have been so; I may have found some of the children there, and talked to them a little; I do not remember as to that.

Q. And did Mr. Beecher leave before you left the parlor? A. No, Sir; I left before he did.

Q. And did your sister leave with you, or did she remain? A. My impression is she remained; I think I did not leave the house at once; I went up-stairs again.

Q. When you left the parlor? A. The parlor; Yes, Sir.

Q. Leaving your sister there? A. Yes, Sir.

Q. And then you went up-stairs? A. I am not sure as to that; probably I did; I do not remember.

Q. I don't know anything about "probably;" did you or not? A. I cannot tell you, Sir.

Q. Did you immediately leave the house, or go somewhere in the house where you had some detention or occupation of some kind? A. I have replied that I do not remember.

Q. You do not know, but you immediately left the house when you left the parlor? A. Yes, Sir; I may have done so.

Q. But your impression is to the contrary? A. No; I have no distinct impression; it is vague; I may or may not.

Q. Do you remember seeing your sister again on that day? A. No, Sir.

Q. Then, as I understand you, so far as you have any knowledge, you retired from that room leaving your sister and Mr. Beecher there? A. Yes, Sir.

Q. And left the house? A. I don't know as to that.

Mr. Evarts—That is all.

Mr. Fullerton—Wait a moment; I want to ask one or two questions—one moment.

RE-DIRECT EXAMINATION OF MR. RICHARDS.

Mr. Fullerton—Have you been subpoenaed more than once in this case. Mr. Richards? A. Yes, Sir.

Q. How frequently have subpoenas been served upon you? A. Four times, I think.

Q. When was the first? A. I think the first must have been three or four weeks ago.

Q. And, since that time, up to the 13th—if that is the date of your present subpoena—? A. [Interrupting]. Yes; I think this was the last one.

Mr. Fullerton [resuming]—Subpoenas were served upon you from time to time? A. Yes, Sir.

Q. You have been asked when you first spoke of this occurrence which you have related. Did you speak to any one in consequence of what you saw there, without relating the occurrence?

Mr. Evarts—I object. I have not introduced that; I have not introduced any new inquiry. My question was, when he first spoke of this occurrence, and to whom; and he said to his wife.

Mr. Fullerton—I have a right to show whether he spoke to any one else.

Mr. Beach—The counsel put a question, when he first spoke to any one of this occurrence.

Mr. Evarts—I asked him when he first spoke of it, and to whom; and he said to his wife; and I then asked him when he spoke to any parties in this case, and he said the day before yesterday. Now, there is nothing in that to permit of this inquiry on the re-direct.

Judge Neilson—It is only on the idea that there may be some correction.

Mr. Fullerton—We want it to appear when he first spoke to any one in regard to this matter which he has stated.

Mr. Evarts—That is proper; but the question is not that; the



question is whether he spoke to any one in consequence of that occurrence. That is not called out by my inquiry.

Mr. Fullerton—Does the gentleman mean to say that I am concluded by what he drew out on the cross-examination, as to the first person to whom he spoke of this occurrence? I take it not.

Mr. Evarts—Unless he spoke to Mr. Beecher it is no part of their right of direct examination.

Judge Neilson—Yes, that is so. Now, then, there is no right on your part, unless it is by way of correcting something that has been brought out on a wrong interpretation.

Mr. Fullerton—Well, it is just that.

Judge Neilson—Well, then, ask the question.

Mr. Fullerton—I have asked the question.

Mr. Evarts—No, you asked if it was not in consequence of this occurrence that he spoke to somebody.

Mr. Fullerton—Yes, and did you speak to that somebody before you spoke to—whoever it was, day before yesterday? A. I am a little mixed, Sir, as to the question.

Mr. Evarts—Why, the witness has stated that he spoke to his wife.

Judge Neilson—Yes, Sir.

Mr. Fullerton—When did you speak to your wife about it? A. The day it occurred, I think, Sir.

Q. Where was she on that day? A. She was at my home in Montclair.

Q. You went home that day, did you? A. Yes, Sir.

Q. Did you tell her what you had seen? A. I think I did; yes, Sir.

Q. Now, did you speak to any one else in regard to it after that?

Mr. Evarts—That we object to, if your Honor please.

Judge Neilson—I think we will take that.

A. Yes, Sir, I think I did.

Q. To whom? A. To my brother-in-law.

Q. Who was he? A. A Mr. Baker.

Q. When did you speak to him about it? A. During the progress of this trial.

Q. How long ago? A. Probably a month ago.

Q. Well, did you say anything to Mr. Tilton in regard to it? A. No, Sir.

Q. Did you say anything in consequence of what you had seen, even if you did not tell what you had seen? A. I don't remember, Sir, having any such.

Judge Neilson—That is all, Mr. Richards.

Mr. Fullerton—Now, Mr. Robinson, will you take the stand, please?

#### TESTIMONY OF JEREMIAH P. ROBINSON.

Jeremiah P. Robinson sworn on behalf of the plaintiff.

Mr. Fullerton—Mr. Robinson, do you reside in Brooklyn? A. Yes, Sir.

Q. A member of the firm of Woodruff & Robinson? A. Yes, Sir.

Q. And a partner of Francis D. Moulton? A. Yes, Sir.

Q. Do you know Mr. Henry Ward Beecher? A. Yes, Sir.

Q. How long have you been acquainted with him; how long have you known him? A. I do not think I have been acquainted with him, to speak with him—speaking acquaintance—more than a couple of years.

Q. How long? A. Two years, probably.

Q. Well, that would carry it back to 1873. Do you recollect whether it was in that year that your speaking acquaintance commenced? A. I think it was about that time, Sir.

#### MR. BEECHER'S INTERCOURSE WITH MR. MOULTON DESCRIBED.

Q. Under what circumstances did you become acquainted with him? A. I think that I met him at Mr. Moulton's house first.

Q. Do you recollect the season of the year? A. I do not, Sir.

Q. Who else was there when you met him there? A. I do not remember that, Sir.

Q. Did you meet him there more than once? A. Yes, Sir.

Q. How frequently? A. Well, I saw him—I have seen him there before I was acquainted with him. I have seen him come in and go out.

Q. How frequently? A. Well, I cannot say. A number of times when I happened to be at Mr. Moulton's.

Q. What was the condition of Mr. Moulton at the time that you met Mr. Beecher there—as to health I mean? A. I saw Mr. Beecher there once when Mr. Moulton was sick.

Q. Now, do you refer to his sickness in the early part of the year 1871? A. Yes, Sir; I think it was in January, 1871.

Q. How frequently did you see Mr. Beecher there during that sickness? A. I do not remember, Sir, but I do not think I saw him many times.

Q. Had you seen him there prior to that sickness? A. I do not think I had, Sir. I do not remember. I did not know Mr. Beecher then very well; I only saw him. I knew him by sight.

Q. Mr. Moulton went, in the early part of 1871, South, did he not—or some time? A. After that sickness, I think he went South.

Q. And after his return from the South, did you meet him there. A. Mr. Beecher?

Q. Mr. Beecher. A. I saw him there afterwards, but I do not know how soon. I have seen him there since then, though.

Q. How frequently, after the sickness, did you see Mr. Beecher there? A. In July, 1871, I left the country, and was absent a year and a half. I do not remember whether I saw Mr. Beecher there many times, or hardly at all after Mr. Moulton's sickness. I do not remember that.

Q. And before you left? A. No, Sir. I did see him there during that sickness.

Q. In Mr. Moulton's sick room? A. I think I saw him once there in the sick room, as I passed in or out.

Q. Did you ever meet Mr. Moulton and Mr. Beecher in the street, at any time? A. Yes, Sir.

Q. When was that? A. I think it was the last 4th of July, Sir; on Sunday, at any rate.

Q. In 1874? A. Yes, Sir.

Q. And where in the street did you meet them? A. I met them on Montagne-terrace, where I live.

Q. Walking together, or standing together? A. They were walking together. They stopped when I met them.

Q. You met them; they were going in one direction, and yourself in another? A. I started to go from my house to visit a friend. As I went from my steps—the stoop of the house—they came around the corner of Remsen-st. to Montagne terrace, together.

Q. When you met, they stopped, you say? A. They crossed over to meet me, as I supposed—they did, at any rate, near the sidewalk of the next house to mine.

Q. Now, Mr. Robinson, relate what occurred after you met, and before you separated? A. I exchanged salutations—

MR. BEECHER'S REGARD FOR MR. MOULTON.

Q. A little louder, please. A. I exchanged salutations with Mr. Beecher and Mr. Moulton, and as near as I can remember, Mr. Moulton said to me that he had not seen me for some time. I had returned from the country the day before, and I think that he had been away before that, but that I do not remember definitely. At any rate, he said that he had not seen me for some time. I said, "No, but I have been visible; you could have seen me if you had wanted to." It was in a joke; and said he: "Do you think I didn't want to see you." Said I, "You said that, I didn't." Mr. Beecher says: "Don't be too hard on my friend Moulton."

Q. A little louder. A. Mr. Beecher replied, "Don't be too hard on my friend Moulton." Says I, "No, Moulton is a good fellow." Said he, "Moulton is as good a friend as God ever raised up for a man," I think that was the expression; and that "if it were not for him, I don't know that I would be a live man." That is all, except a good-bye, and I went along, and they went along. They went their way, and I went another.

Q. That was on the 4th of July, 1874? A. That was on the 4th of last July, I think—on Sunday. The 4th of July was on Sunday, wasn't it?

Q. And at what time of the day? A. It was, I should think, between one and three o'clock. It was after I had my dinner, and was going out to visit a friend.

Q. What was the attitude of Mr. Beecher when he made use of the expression which you have given to us? A. I think he laid his hand upon Mr. Moulton's shoulder.

Q. Now, at what particular moment did he lay his hand upon his shoulder, with reference to what he said? A. The expression in regard to his being his friend.

Q. When he made use of that expression? A. Yes, Sir; he put up his hand on Mr. Moulton's shoulder.

Q. Was it only upon his shoulder? A. I think that is all Sir.

Mr. Fullerton—That is all.

CROSS-EXAMINATION OF MR. ROBINSON.

Mr. Evarts—Mr. Robinson, how many days have you attended as a witness in this Court? A. How many days have I been here?

Q. Now, Sir, as a witness. A. I was here yesterday after-

noon, day before yesterday morning, and about an hour and a half the day before that.

Q. Yes; and last week and the week before? A. I have not been here before, Sir.

Q. Oh!

Mr. Fullerton—Well, do you deny that, Mr. Evarts?

Mr. Evarts—Oh! no; Mr. Robinson has been here a good many times.

Mr. Fullerton—Just exactly as many times as he has stated.

Mr. Evarts—I have no doubt he stated it correctly.

Mr. Beach—You seemed to express a doubt.

The Witness—I would not have come at all if I could avoid it.

Mr. Evarts—No; I suppose not. Now, Sir, is Mr. Moulton or Mrs. Moulton any connection or relative of yours? A. Mrs. Moulton is.

Q. What connection? A. She is a niece of mine, Sir.

Q. Has your partnership with Mr. Moulton been lately dissolved? A. It is not dissolved yet, Sir—the partnership of the firm. The warehouse business has been withdrawn from the firm. The leases terminated on the first of January, and I owning the property and Mr. Woodruff owning others, we withdrew—the leases terminated, and we have withdrawn that part of the business from the firm.

Q. Dissolved, then, as of the first of January?

Mr. Beach—No, Sir.

Mr. Fullerton—Oh, no!

Mr. Beach—He tells you it was not dissolved.

Mr. Evarts—In respect to that part of the business? A. Yes, Sir; the warehouse business.

Q. Now, Sir, in what business does any connection still continue, and of what durability is any present connection? A. The merchandise business is still continued.

Q. With a term fixed for the termination of that also? A. Yes, Sir.

Q. When does that terminate? A. The first of March next.

Q. Wasn't it originally fixed to terminate on the first of February? A. The first of this last February?

Q. This present February. A. Originally fixed?

Q. Yes, Sir, originally; when you dissolved as to part wasn't the connection that was retained originally fixed to dissolve on the first of February? A. Not originally. The first dissolution that was fixed upon was fixed upon a year ago last February, to take place, if we could arrange our business so that it could terminate then, on the first of May or June last.

Q. Of last year? A. Yes, Sir.

Q. Well, I am not talking about that. That is all right. A. No; but the answer to the original—

Q. Now, you did have a present termination of some part of your connection on the first of January; that you have stated. Now, wasn't it a part of that arrangement which terminated a part of your business relations on the first of January, that the whole of your business relations were to terminate on the first of February—the present February? A. It was to terminate on last February.



Q. This February? A. There had been an arrangement that it should terminate then.

Q. This present February? A. Yes, Sir; but there had been an arrangement at January, too, and last August and September, but that was with reference to arranging our business.

Q. And now the arrangement is, that it is to terminate wholly on the 1st of March? A. The 1st of March, unless there is some reason for postponing it again.

Q. Yes, Sir; unless it is changed? A. Yes, Sir; there is a definite understanding that it shall terminate then.

Q. Now, was it at Mr. Moulton's request that the full termination of your connection was postponed from the 1st of February to the 1st of March?

Mr. Beach—I don't see the importance or propriety of this.

Judge Neilson—I think we will take it.

The Witness—The question again, Mr. Evarts, if you please.

Q. Was it at Mr. Moulton's request that the full termination of your connection as partners should be postponed from the 1st of February to the 1st of March? A. Yes, Sir.

Q. Was it at his request that the full termination of your connection was not completed on the 1st of January, but in part it was postponed to the 1st of February? A. Yes, Sir; I think it was.

Mr. Evarts—That is all, Sir.

Mr. Fullerton—That is all, Mr. Robinson. Mr. William Brasher.

#### TESTIMONY OF MR. WILLIAM M. BRASHER.

William Marston Brasher, sworn on behalf of the plaintiff.

Mr. Fullerton—Where do you reside? A. 198 Livingston street.

Q. In this city? A. Yes, Sir.

Q. And how long have you resided there? A. 40 years.

Q. Do you know the parties to this action? A. I do, Sir.

Q. How long have you known Mr. Henry Ward Beecher? A. Ever since he came to Brooklyn, Sir.

Q. Have been on speaking terms with him during that period? A. No, Sir.

Q. But familiar with him? A. I have been introduced to the gentleman.

Q. Met him often? A. No, Sir; but once.

Q. I mean in the street? A. Oh yes, Sir.

Q. So that you recognized him when you saw him, easy? A. Always.

Q. And you were acquainted also with Mr. Tilton, I understand you? A. Yes, Sir.

Q. You knew where his residence was in Livingston street, did you? A. I passed it six times a day.

Q. And you knew where his residence was in Oxford street, before he removed to Livingston street? A. No, Sir.

Q. Did not? A. No, Sir.

Q. I want to ask you whether you ever saw Mr. Beecher at Mr. Tilton's house in Livingston street? A. I never was in Mr. Tilton's house, Sir.

Q. Very likely. That would not prevent you from answer-

ing my question, Mr. Brasher? A. I thought you meant whether I met him there, Sir.

Q. No, Sir; if you ever saw him there? A. Yes, Sir, I have seen him on the stoop.

Q. How frequently? A. I have seen him enter and go out several times.

Q. Give us some idea of the number of times, if you please? A. I cannot be definite on that subject.

Q. Be as definite as you can? A. Say, four or five times.

Q. And when did you see him go in and come out? A. At different hours of the day.

Q. How early and how late in the day? A. I never recollect but once that ever made an impression on me, and that was early in the morning.

Q. How early in the morning? Q. Well, it is so long ago, Sir, that I cannot fix the time.

Q. Give it, as near as you can, Mr. Brasher? A. I can only tell you I was going a fishing and it struck me to be an unusual time for a gentleman to be visiting.

Q. Well, give us some idea of the earliness of the hour. A. I cannot recollect the time, Sir.

Mr. Beach—Give it as near as you can.

Mr. Fullerton—As near as you can get at it? A. Well, it was after breakfast, or about breakfast time.

Q. And what season of the year was it? A. It was in the Fall.

Q. Do you think it was after breakfast? A. I cannot be positive about that.

Q. Can you say that it was not before breakfast? A. I cannot.

Q. In which direction were you going? A. Towards Court street.

Q. You were going fishing, you say? A. Yes, Sir.

Q. With your yacht? A. I was going toward my yacht.

Q. Well, you were going fishing with your yacht? A. I was going aboard of my yacht.

Q. Well, after you got aboard, you were going a fishing with your yacht? A. Yes, Sir.

Q. What time did you usually start to go fishing? A. I went all times of day and night.

Q. Well, when you started early in the morning, what time did you start? A. Two o'clock in the morning, sometimes.

Q. Now, Mr. Brasher, I want you to tell this jury as near as you can, at what hour in the morning you saw Mr. Beecher there? A. I would do so with pleasure, Sir, if I knew the hour, if I could fix it.

Q. As near as you can, is my question? A. It was about breakfast time, I think, that morning, because the sun was bright and clear, and looking toward me it dazzled him; it fell in his eyes so that he turned away; he turned his head.

Q. And where was he at the time you saw him? A. He was standing on the stoop.

Q. What do you mean by breakfast time? A. I take breakfast at six o'clock, Sir, in the Summer.

Q. What time did you take breakfast at the time that you saw Mr. Beecher? A. I could not state Sir.

Q. Well, as near as you can recollect? A. I cannot recollect, for many reasons.

Q. You are sure you had your breakfast that morning? A. I am not sure, Sir.

Q. Well, then, it may have been before breakfast? A. I sometimes take my breakfast aboard the yacht.

Mr. Beach—What is his best recollection?

Mr. Fullerton—I am putting that very question, my dear Sir. Give us the best impression now, Mr. Brasher, as to the time when you saw Mr. Beecher there on the stoop? A. Well, I would not like to state a time, for I cannot recollect. I have tried my best to fix that date, and I cannot do it.

Q. I know, Mr. Brasher, you cannot do it; I understand that, because you told me so, and I take it for granted, of course, that it is so. A. I am under oath, Sir.

Q. Certainly, Sir; I have great respect for your candor, but tell me, according to your best impression, what was the hour? A. I should think it was between seven and eight o'clock. That is the best recollection I have.

Q. Very well, that is satisfactory. A. It was early.

Q. And can you give us now your best impression as to the season of the year when it was? A. In the Fall, Sir.

Q. Well, there are three months in the Fall season; can you tell which month it was in, Sir? A. I met Mr. Beecher so frequently in that location that it is beyond any man's memory to place it.

Q. Very well. Now, how frequently did you meet him in that location? A. I could not tell you, Sir.

Q. Give us some idea of it? A. Fifty times.

Q. During what period of time? A. All the time that I lived there.

Q. That was in Livingston-st.? A. Somewhere in that neighborhood; he was either coming or going from there.

Q. And where did he reside during that period? A. I think on the Heights, or somewhere near there.

Q. How far from Livingston-st., where you saw him? A. It is three-quarters of a mile.

Q. Was he in the act of going in the house or coming out of the house? A. He was standing on the stoop, Sir.

Q. And did you pass by leaving him on the stoop? A. Yes. I passed him while he was on the stoop.

Q. How near was he to the door? A. I should think he was about half way between the door and the edge of the stoop.

Q. Looking out toward you? A. He appeared to turn just as I came up to him. The sun was in the East and I was going to the West.

Q. And did he stand there until you passed by? A. I think he did.

Q. Did you speak with him? A. I did not, Sir.

Q. Did you salute each other? A. No, Sir.

Q. You had a speaking acquaintance with him at that time? A. No, Sir; I never spoke to him but once; then I was introduced to him on a Fulton ferry-boat.

Q. Since that time, was it? A. No, Sir; but once.

Q. Well, but was it since that time? A. Oh! my, yes; years afterward.

Q. Did you, before you got out of sight, see where Mr. Beecher went? A. No, Sir.

Q. Did you look around after you passed by? A. I did not, Sir.

Q. Did you ever see Mr. Beecher there at any other time in the morning? A. Yes, Sir.

Q. How long before or after the occasion which you have testified to? A. Well, I have seen him there at different times through the day. That was the only day that I ever took any notice of it.

Q. That is, you mean special notice, I suppose? A. Special notice; yes, Sir.

Q. Where did you see him at other times—on the stoop or in the house? A. I have seen him talking with Mr. Tilton at the gate.

Q. Where else have you seen him? A. In that neighborhood.

Q. Going in or coming out? A. Yes, I have seen him several times, going in and out, but mostly in the street.

Q. How, Sir? A. Most frequently in the street.

Q. Near the house? A. Yes, Sir.

Q. Did you ever see him upon the stoop at any other time than that you have named? A. I have said four or five times.

Q. On the stoop? A. Either going in or coming out.

Q. How many times did you see Mr. Tilton with him. A. Only once, Sir.

Q. That was at the gate? A. That was at the gate.

Q. At what hour of the day did you see him going in or coming out? I do not speak now of the occasion when you have fixed the time. A. I cannot recollect, Sir; different times.

Q. When you were going fishing? A. It might have been on some other occasions.

Q. Do you recollect seeing him at any other time in the fore part of the day? A. No, Sir.

Q. Did you ever see anything peculiar in his demeanor whilst he was there? A. Not in the least, Sir.

Q. When you saw Mr. Beecher there early in the morning, do you know whether Mr. Tilton was there or not? A. I do not.

Q. And you have no means of ascertaining that fact? A. No, Sir.

Mr. Fullerton—[To Mr. Evarts.] You can ask.

#### CROSS-EXAMINATION OF MR. BRASHER.

Mr. Evarts—How many days have you attended as a witness in this case? A. I have been here three days to-day. I have been very much annoyed in my business. I was detained from going to Washington and kept here.

Q. To give this evidence? A. Yes, Sir.

Q. Now, Mr. Brasher, during how many years is it that the four times have happened in which you saw Mr. Beecher going into or coming out of this house? A. Several years, Sir—four or five years probably.

Q. All the while you lived there in Livingston street? A. Yes Sir.

Q. What was this year he lived in Livingston street? A. From 1864 to the present time.



Q. From 1864 to the present time? A. Yes, Sir.

Q. And in that period of time you have seen Mr. Beecher go in or out of that house four times? A. Four or five times.

Q. And the only noticeable hour of those visits was between seven and eight o'clock in the morning, was it not? A. As near as I can recollect.

Q. As near as you can fix it. Now, Sir, I think you have been unable to define the part of the Fall—the month, or any nearer time? A. Yes, Sir.

Q. And the year, have you been able to give that? It may have been in the years between 1865 and 1871, we will say, may it not? A. I don't think Mr. Tilton lived there when I first went there in 1864.

Q. Ah! 1866 he went there. Any time between 1866 and 1870, it might have been? A. Yes, Sir.

Q. And you cannot give it any nearer than that? A. No, Sir.

Q. Now, Sir, when were you first introduced to Mr. Beecher? A. I cannot recollect that; it was on board the ferry-boat, and I forget even who introduced me.

Q. Within how many years back? A. It must have been twelve or fifteen years ago.

Q. Then you had not been introduced to him before that? A. No, Sir.

Q. And had no other acquaintance with him? A. No, Sir.

Q. Now, do you know whether Mrs. Tilton was at home that morning? A. I do not.

Q. Do you know whether she was in town that morning? A. No, Sir.

Q. Do you know whether Mr. Beecher went to see Mr. Tilton or Mrs. Tilton? A. No, Sir.

Q. You don't know anything about it? A. No, Sir.

Q. Except that it was between seven and eight o'clock in the morning that you saw him on the stoop? A. I cannot mention the time. I think they asked me.

Q. And it occurred to you it was an early hour for a call? A. Yes, Sir.

Q. Did you know whether Mr. Beecher had come from Washington that morning? A. No, Sir.

Q. And had called to see Mr. Tilton on that errand? A. No, Sir.

Q. You didn't know that? A. No, Sir.

Mr. Evarts—That is all, Mr. Brasher.

Mr. Beach—Did you state the year in which this occurred? A. No, Sir.

Q. And did you say that you could not? A. I could not do it.

Mr. Evarts—He says it might have been any year between 1866 and 1870.

The Witness.—The time I lived there.

#### LEGAL HOLIDAYS DISCUSSED.

Judge Neilson—I wish to inquire of the counsel, in view of the health of the juror, whether we are to sit on Monday—what is the rule—Washington's birthday?

Mr. Evarts—I suppose we have no right to.

Mr. Beach—I suppose we have, but if it is at all for the convenience of the jurors, or anybody else, we shall make no objection.

Judge Neilson—I would like to inquire for information.

Mr. Evarts—Is not the 23d of February a legal holiday?

Judge Neilson—Made so as to commercial paper and the like. That is a matter in which we have no interest.

Mr. Fullerton—I think we had better send for the statute.

Mr. Evarts—I had an idea it was a legal holiday.

Judge Neilson—Send for the statute.

Mr. Beach—The statute making it a holiday confines it entirely to commercial paper, as your Honor sees; but I had a recollection that there was a general statute which forbade the holding of court on that day.

Judge Neilson—There is a provision inserted in the statute that the clerk's office must be closed on that day; I would like to learn how that is.

Mr. Evarts—I don't think the counsel have any wish not to sit on that day, or any special wish to sit.

Judge Neilson—Then we can determine to-morrow, from the way the juror feels.

Mr. Evarts—Yes, Sir.

Judge Neilson—Well.

Mr. Evarts—And we will look at the statute in the meantime.

Judge Neilson—Well.

#### A RESERVED QUESTION IN THE EXAMINATION OF MR. TILTON.

Mr. Beach—I now bring up the question which your Honor suggested a while ago—a reserved question in regard to the omission of the balance of the interview which was drawn out by the counsel for the defense from Mr. Tilton, between himself and his wife, in regard to her appearance before the Committee. I submitted to your Honor that either we were entitled to call from Mr. Tilton for the balance of that interview, or that the part which was taken should be struck out.

Judge Neilson—That was the question which was reserved; yes, Sir.

Mr. Beach—If your Honor, upon reflection, has formed any opinion upon the subject, why, we, of course, will be governed by it.

Judge Neilson—I think the part taken should be struck out. Let the stenographer's attention be called to the precise matter.

Mr. Beach—We don't move to strike it out. We move to give the balance, and we rely upon the rule that, they having given a part of the interview, we are entitled to the whole of it.

Judge Neilson—I think it was upon your interrogatory, and the objection that the counsel interposed was that it did not intervene soon enough, but allowed to proceed to a certain year.

Mr. Evarts—Yes, Sir.

Judge Neilson—That might occur from an inadvertency.

Mr. Beach—That is not averred by the counsel. It would be hardly consistent with the portion of the interview that was given.

Mr. Evarts—It was as short as possible; there were not over a dozen words.

Mr. Beach—Oh! that is a mistake.

Mr. Evarts—Well, I now know for the first time what you are talking about.

Mr. Beach—Your Honor does not strike out the evidence upon your own motion?

Judge Neilson—No; I had it before me in that alternative, either to retain it or strike it out.

Mr. Beach—Yes, Sir; this is an alternative submitted to your Honor's discretion, but I don't understand them to make a motion to strike out. We do not. We insist upon giving the balance of the interview.

Judge Neilson—If you had changed your mind from what it was before I will hear you.

Mr. Beach—If your Honor please, in the argument I insisted upon two propositions, first, that having permitted us to give a portion of the interview we were entitled to the whole of it.

Judge Neilson—Yes.

Mr. Beach—And, second, that they must relieve themselves from the dilemma from which their tacit concurrence in the evidence placed them, by a motion to strike out, not that we are called upon to move to strike out, and they sit silent; they don't move to strike out, and, therefore, I submit that we can go on with the witness and finish his examination upon that point.

#### ANOTHER EFFORT FOR THE HOLIDAY.

Judge Neilson—[To an officer]: Hand the statute to the counsel.

Mr. Beach—The statute is [Reading]:

"The following days, viz., the first day of January, commonly called New Year's, &c., enumerating the 22d of February with others, "shall for all purposes whatsoever, as regards the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, made after the passage of this Act, be treated and considered as is the first day of the week, commonly called Sunday; and when either of those days shall occur on Sunday, the following Monday shall be deemed a public holiday, and any bill of exchange, bank check or promissory note made after the passage of this Act, which, but for this Act, would fall due and payable on such Sunday or Monday, shall become due and payable on the day following such Sunday or Monday."

Mr. Evarts—Does that make it a public holiday?

Judge Neilson—This latter statute, I think, does.

Mr. Evarts—Yes, Sir; but that is only the commercial part of it.

Judge Neilson—The statute of 1873 provides that

"The office of Sheriff of the County, clerk, register, and the office of the clerk of the City Court of Brooklyn shall be closed on Saturdays at three o'clock P. M."—well, ours is four—"shall be kept open every other day in the year, from nine in the forenoon to four o'clock in the afternoon except Sundays, the 1st day of January, commonly called New Year's day, the 23d day of February, the 30th day of May, known as Decoration Day, the 4th day of July, and the 25th day of December, and any other appointed day recommended by the Governor of this State or the President of the United States as a day of fast or thanksgiving, shall be deemed and considered a public holiday for all or any service,"

—so that the clerk's office is closed on that day.

Mr. Evarts—I should think that makes it a holiday, if your Honor please.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—It strikes me that makes what we call a *dies non*, though I have no desire it should be so treated.

Mr. Beach—I suppose it is so.

Mr. Evarts—We might as well know it before we adjourn.

#### THE RESERVED QUESTION ARGUED.

Mr. Beach—Now, Sir, the question before your Honor arises in this way. Speaking of a report—

Mr. Evarts—Do you say there is any motion reserved?

Mr. Beach—Yes, Sir.

Mr. Evarts—Where is that? Oh, yes, I see; 2d column of page 442.

Mr. Beach—I find that I made a motion to strike out; I made a motion to strike out after your Honor ruled that the balance of the conversation could not be given. [Reading]:

Mr. Fullerton—Why, it is my suggestion that if they deprive us of the benefit of the whole of the conversation, that the part of it already given in evidence should go out with it.

Mr. Evarts—Do you make a motion to strike it out?

Mr. Fullerton—I made that suggestion to the Court.

Mr. Evarts—Until you make the motion I won't discuss it.

Mr. Beach—Well, we do make the motion, Sir. Your Honor ruling that we can go no further with the conversation we now move to strike out that which has been given.

Mr. Evarts—To strike out the whole?

Mr. Beach—Yes, Sir.

And then followed some discussion at the close of which your Honor said: "Well, we will proceed, Mr. Fullerton reserving this until I can hear the counsel further on the subject; I would be happy to hear him of course." I think your Honor was right.

Mr. Evarts—The ruling, if he did not go any further, was that the conversation was disposed of, and then my friends made their motion to strike out, and, on that motion to strike out, Mr. Beach says: "I do not wish to detain the Court, Sir; but I will present it to your Honor hereafter." (That is, authority.) "If your Honor will permit me for a moment I think I can refer to authorities upon the subject." Then your Honor says: "Well, we will proceed, Mr. Fullerton, reserving this until I can hear the counsel further on the subject." That is the point in which the matter comes up now.

Mr. Beach—No, Sir; your Honor will perceive that in the address to the Court when I use the language which Mr. Evarts has quoted, the whole subject as to the admissibility of the remainder of the interview between Mr. Tilton and his wife, as well as the question of striking out, was opened.

Judge Neilson—That was the branch of it on which you wished to furnish authorities.

Mr. Beach—The first branch was that as to the admissibility of the whole conversation under the circumstances, and that was the argument which your Honor in kindness permitted me to present to you in review of the conclusion at which you had previously arrived, and you reserved that question for consideration at a future day.

Judge Neilson—The mere request to strike out I need not



have reserved; that was the same matter. I think the simplest way would be now to dispose of it.

Mr. Evarts—Well, I will call attention to what I consider the matter when it comes to my turn.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—Well, it is your turn now. The last that I said to your Honor was:

The issue between us, Sir, cannot be avoided by the gentleman. I say that he sat still while this witness detailed a very considerable part of a conversation between himself and his wife, and that it was the duty of the gentleman, if he intended to object to any part of that interview, to interpose the objection when the narrative on the part of the witness commenced, and that it is unjust and illegal to permit the half of that conversation to be given until it reaches the point so far satisfactory to the counsel upon the other side, and when they apprehend that the remaining portion of it will be unfavorable to their interest, then to shut the mouth of the witness by an objection.

—and a few additional remarks. Now, your Honor suggested that it was possibly an inadvertence on the part of counsel, and inattention to the progress of examination. But if your Honor will direct attention to the history of the transaction, you will perceive that no such excuse as that could be given, and I submit no such excuse has been suggested by the counsel up to this time. Speaking of two reports which were prepared by Mr. Tilton—proposed reports—for the Committee, the inquiry was by Mr. Fullerton:

Q. I limit my question to the proposed report before the Committee, in evidence. Is that the short one or the long one? A. It is the short one.

Q. It is the short one. I want you to state under what circumstances the short report was prepared? A. The circumstances were these. Mrs. Tilton came home one evening, and informed me that she had been down—I beg pardon for not addressing the jury—Mrs. Tilton came home one evening about 10 o'clock and informed me—this was the 6th or 8th of July—informed me that she had been down to a Committee of Plymouth Church and I asked what Committee. She said a Committee to inquire into my letter to Dr. Bacon, to do away with the scandal, and she said that she had denied everything—blotted it all out.

It seems to me impossible that the gentleman could have been so far inattentive as not to have noticed before Mr. Tilton had arrived at that point that he was detailing an interview between himself and his wife. Then Mr. Evarts says:

If your Honor please, the occasion of his preparing this report may, perhaps, justify an allusion to what passed between him and his wife, as the basis of that, but that occasion does not give the right to detail conversation between himself and his wife.

—and so the discussion went on, Sir, until we reached the point where your Honor reserved the question, and the whole question, in all of its branches for future consideration. Now, I insist, Sir, that we have a right to give the balance of that conversation.

#### ARGUMENT OF MR. EVARTS

Mr. Evarts—I do not think there can be any doubt that they have not the right to give the conversation in evidence, *per se*; that they admit, I suppose; that they do not deny. I do

not understand them as claiming to give in evidence, the conversation between Mr. Tilton and his wife. But they have a right to ask as an inducement, no doubt, whether something did not happen in the same sense in which I endeavored to show by inducement, this morning, that this witness, Mr. Bell, had heard something. Your Honor ruled against me there, but here I think that was a right ruling, that they could show an inducement. The question is this, "I want you to state under what circumstances the short report was prepared." Now, that was not a question that I could object to.

A. The circumstances were these: Mrs. Tilton came home one evening, and informed me that she had been down; Mrs. Tilton came home one evening about 10 o'clock, and informed me—this was the 6th or 8th of July—informed me that she had been down to a Committee of Plymouth Church; and I asked what committee. She said a Committee to inquire into my letter to Dr. Bacon to do away with the scandal, and she said that she had denied everything—blotted it all out.

Then I said:

If your Honor please, the occasion of his preparing this report may, perhaps, justify an allusion to what passed between him and his wife as the basis of that, but that occasion does not give the right to detail conversations between himself and his wife.

Your Honor said: "So I think, Sir." Then they claimed that the interruption should have come a little earlier, and took the position that, "if any of it is stricken out, what has been taken in regard wholly to that interview should be stricken out." Judge Neilson says: "Well, it fixes the occasion, that is the effect of it," and my learned friends go on discussing. "The report was based upon that fact," Mr. Fullerton says. I say: "That is all in evidence. That I have not objected to. That is an occasion I do not know, of course, what did pass between this gentleman and his wife afterwards, only it is not a matter that, by fixing an occasion by an introduction to the report, gives an opportunity to go on and give a conversation between them." Your Honor says: "I think not, Sir." I say: "I think it should go no further—that is, no further in respect to the conversation." Your Honor says: "I think he can say, after giving the conversation, that, in consequence of what was said, he was led—if that was one of the circumstances that led him—to make the report." And your Honor again says: "I think he can say that, in consequence of what was communicated to him, he was led to the idea of making this report without giving the conversation; then you have it." And your Honor finally says: "Yes, Sir," in reply to Mr. Fullerton, "but we cannot take the conversation between them in my judgment." I say: "The substantive fact that she told him that she had been before the Committee, and denied all the charges, is already in. That is sufficient foundation, it seems to me." Judge Neilson said: "You will agree with the counsel in that, I think," to Mr. Fullerton, at which he expressed his surprise—"How, Sir?" "Judge Neilson, the counsel says that the substantive fact, that she had been before the Committee and denied the charges, is already in. That covers the fact." Then Mr. Fullerton raises the question: "We either want the whole or none. They cannot wait until a part of it is out, and then object to the balance." Then your Honor decides the point, "You cannot take the con-

versation, and further, Sir." Then Mr. Fullerton says: "Then I suppose it all goes out." "Oh! no, I think it stands where it is." Your Honor says, "it appears now that she communicated the fact that she had been before the Committee and denied all the charges." Mr. Fullerton says "Yes, but I want what further she said." Then they argued about it, and about the interruption occurring at this point, that it should have occurred either earlier or later. Your Honor says: "It may be hard, Sir, but I think the objection must be sustained at the point where it was made." Then Mr. Fullerton says: "It is not a question of whether the objection should be sustained. The question is whether the whole conversation is to go out, inasmuch as the balance of it— Judge Neilson—There has been no motion to strike out as yet. Mr. Fullerton—Why, it is my suggestion." Then the motion is made.

Judge Neilson—Now, what are the words in the evidence?

### GENERAL DEBATE.

Mr. Evarts—Now, your Honor has decided that the further conversation shall not be given, and if any time was to be made to give the further conversation from the witness, it should have been made before the witness left the stand.

Judge Neilson—What are the words after the "Bacon letter," in that answer? Just close it.

Mr. Evarts—I will read it in a moment—so that the only question now is, whether some part of this answer shall be struck out.

Mr. Beach—I prefer to make my motion in my own form, and not let the gentleman make it.

Mr. Evarts—The difficulty is that the motion has been made, has been partly argued, and the further argument reserved by your Honor's permission. That is the difficulty. We have got a record—motion to strike out. The other question was not reserved and was not decided—that they should not give any further communication.

Mr. Beach—I beg your Honor to hear me upon that proposition before you decide it.

Judge Neilson—What are the words in that answer after "The Bacon letter," towards the close of it?

Mr. Evarts [Reading]:

"She informed me she had been down to a Committee of Plymouth Church; and I asked her what Committee; she said a Committee of inquiry into my letter to Dr. Bacon."

Judge Neilson—Now, Mr. Beach, I think—my impression is—the words after "Dr. Bacon" are to be stricken out.

Mr. Evarts—I will read these words, Sir:

"To do away with the scandal; and she said that she had denied everything—blotted it all out."

Judge Neilson—If that stood, they ought to have more.

Mr. Evarts—Your Honor decided that question, that it should stand as it was, and that the objection was rightly made at that point, and then entertained a motion to strike out the whole.

Judge Neilson—I am very clear now that if anything is stricken out, it is simply what occurred after the word "Bacon."

Mr. Evarts—Well, it is not for me, of course, to say how your

Honor might conclude on the subject, but the motion is to strike out.

Mr. Beach—I do not make any such motion.

Mr. Evarts—Very well, there is no question reserved. My learned friend says he does not make the motion to strike out, and there certainly is no other question reserved for them. Your Honor's ruling upon the evidence is complete, with that exception, and if the motion is not insisted upon it is wasting the time of the Court to go on with the matter.

Mr. Beach—I may, perhaps, say that I am very gratified to learn that the gentleman is getting a little careful about the time of the Court. You did, at one time, Sir, in the course of that discussion, decide that question. Afterwards you indulged me so far as to permit me to submit a short argument to your Honor, in substance asking you to review that decision.

Mr. Evarts—I do not so understand.

Mr. Beach—Well, let us see.

Judge Neilson—Also gave you permission—it is very clear in my mind also—also gave you permission to bring in authorities upon that particular question, to wit, your right to continue the part of the conversation given.

Mr. Beach—I hope the gentleman does not suppose that your Honor gave me a permission to look up authorities upon a motion to strike out.

Judge Neilson—No, it was not that.

Mr. Beach—No, I think not.

Mr. Evarts—I don't know why he should not. It was the only motion pending and the only thing you were asking.

Mr. Beach—Well, the gentleman can make that assertion as repeatedly as he pleases; the record is there, and the last words that were said to your Honor before you granted me the opportunity of presenting authorities were said by myself, and they express themselves, however awkwardly. I read a portion, Sir; I will read the balance of what I said:

I say it is untimely and inadmissible, but if under the ruling of your Honor the objection is to be sustained that the whole conversation should be given; that it cannot thus be mangled and misrepresented in its true scope and effect to place the party who offers it in a disadvantageous position. If your Honor will permit me, Sir, a moment, I think I can refer to authorities upon the subject.

—that is, upon that subject of interrupting the conversation at that stage of its development.

Judge Neilson—Certainly.

Mr. Evarts—On the motion to strike out?

Mr. Beach—No, Sir; it is not on the motion to strike out.

Judge Neilson—The instance is where a Judge, if I understand him right, acts on a first impression—announces that impression and yet is willing to be corrected and hear authorities, if the counsel wish to introduce them.

Mr. Beach—I suppose so, Sir. Perhaps it was impertinent in me to ask your Honor to reconsider the decision which you had made, but your Honor indulged me in doing it, and permitted the question to be reconsidered.

Judge Neilson—I think it is the duty of the counsel to correct me when I fall into an error; that is what they are here for.

Mr. Evarts—The difference between us is as to what the record shows, as to what your Honor did and what was reserved.



Now, I understand the matter to be finally disposed of, unless they move to strike out that. So far as the question of introducing further evidence was concerned it was ended. We drove them to a necessity then of an alternative to get it out if they could. They were arguing that question and proposed to give authorities on the striking of it out.

Judge Neilson—I did not so understand it.

Mr. Evarts—And as a part of that argument that it ought to be all in or all out; that I agree.

Judge Neilson—Well, they claim it ought to be all in—the whole conversation.

Mr. Evarts—That your Honor had disposed of finally.

Judge Neilson—Well, I was willing to hear it further.

Mr. Evarts—And when your Honor said it ought to go out, then your Honor said there was no motion to strike out. Then they made the motion to strike out, and that was reserved.

Mr. Beach—And the counsel insists in chopping in two the course of ruling upon the part of your Honor on this subject just as he does in chopping in two this conversation. He does not consider the last portion of the proceedings upon that topic in which your Honor reserved this primary and first question. And to show your Honor that you had certainly a different view of the question which was pending before you when Mr. Tilton's examination was closed apparently, and he was about leaving the stand, you then suggested that here was a question reserved and to be decided in regard to the evidence of Mr. Tilton. If it was a mere motion to strike out we did not want Mr. Tilton any further on the stand. But the motion was as is apparent from the suggestion which your Honor then made as you understood it—the motion was as to the propriety of our proceeding to give this evidence.

Judge Neilson—So I have understood it. Look at the words in the answer which come after "Bacon."

Mr. Evarts—Does your Honor understand there was a reservation of a right to examine Mr. Tilton further?

Mr. Beach—Why, yes, Sir; when your Honor made that suggestion, why, then, we said we would call Mr. Tilton at a subsequent time upon that point.

Mr. Evarts—At that time.

Judge Neilson—Look at that after the word "Bacon" and see what you think of those words.

Mr. Beach—There are so many talking in my ears that I cannot hear your Honor.

Judge Neilson—At the close of that answer read the last line or two and see what it is.

Mr. Beach—At the close of Mr. Tilton's answer?

Judge Neilson—Yes, Sir; after the word "Bacon," I think, if the answer stands down to that point and the rest is struck out.

Mr. Beach [reading]: "She said a committee to inquire into my letter to Dr. Bacon."

Judge Neilson—Now, stopping at that point, I think the rest could be stricken out; that qualified it somewhat.

Mr. Beach—Well, but I don't move to strike out; especially I don't move to strike out a part of it; I am not moving to strike out, your Honor; I am asking you to permit me to give the balance of this conversation.

Judge Neilson—I understand that.

Mr. Evarts—That question has not been reserved. It was finally postponed, and the witness is off the stand.

Mr. Beach—Well, your Honor has three or four times overruled the gentleman on that point, and said your understanding was otherwise, and that is enough for me.

Judge Neilson—Well, that settles that point. Now, I think that those last words are struck out.

Mr. Beach—Do you strike it out on your own motion?

Judge Neilson—No, I had a motion before me the other day, which I held.

Mr. Beach—But I moved to strike out the whole. I did not move to strike out that part.

Judge Neilson—If you move to strike out the whole, I can strike out a part.

Mr. Beach—I hope your Honor will not do that, because if any part of it stands we may want the whole.

Judge Neilson—Suppose you read it now.

Mr. Beach—It is the short one:

"I want you to state under what circumstances the short report was prepared? A. The circumstances were these: Mrs. Tilton came home one evening, and informed me that she had been down—I beg pardon for not addressing the jury—Mrs. Tilton came home one evening about 10 o'clock, and informed me—this was the 6th or 8th of July—informed me that she had been down to a Committee of Plymouth Church, and I asked what Committee. She said a Committee to inquire into my letter to Dr. Bacon."

Judge Neilson—Now, they are stopped at that point, that being retained. What follows becomes sensible, because inquiry is made whether that is the first time he learned there had been a Committee at all. Strike that out, and it would leave what remains from their interrogatories uncertain, I think, and confused.

Mr. Beach—Yes, Sir; but still the question comes up, whether these gentlemen can interfere in an examination at a point where so much of the conversation had been given by their tacit admission.

Judge Neilson—Yes; my trouble is, that I cannot persuade myself that a conversation with Mrs. Tilton ought to be received; but a part of it has been received.

Mr. Beach—Then the whole of it ought to go out, or the whole of it come in.

Judge Neilson—See how the effect is upon the subsequent evidence. The effect is bad upon the subsequent evidence. It would introduce confusion.

Mr. Beach—No, I think not.

Judge Neilson—If part of that is retained, the rest is unelligible.

Mr. Beach—There is no subsequent evidence that has a relation to this, because we immediately go on with another subject.

Judge Neilson—Yes; the subject of when he learned there was a Committee; and he says that is the first time he learned it. You go on with your interrogatories as to when he first learned there was a Committee, and he explains that is the time he learned it—that evening.

Mr. Beach—Why, we did not. Your Honor is mistaken in

that. That is another breach of the examination, and not connected with this at all. The precise point presented to your Honor is, whether these gentlemen having permitted us to give so much of a conversation, without objection, can interrupt it at the point which they desire and shut out the balance.

THE RESERVED QUESTION RULED OUT.

Judge Neilson—Now, if it were not a conversation between husband and wife I should adopt your rule; but here is this additional restraint, which is very serious, and which in ordinary cases does not follow.

Mr. Beach—Why, Sir, the conversations between Mr. Tilton and his wife have been given over and over again, on their examination.

Mr. Evarts—Well, that is not—

Mr. Beach—Certainly so.

Judge Neilson—At your leisure, strike out the entire answer, or that part of it which follows the words "Dr. Bacon."

Mr. Beach—If your Honor please, I hope you will not assume to strike out evidence which we have given, when we do not make a motion to strike it out, and when the other party does not make a motion to strike it out.

Mr. Evarts—There is nothing pending; certainly there is no motion to strike out.

Mr. Beach—Well, I am pending.

Judge Neilson—I don't like those last words. If you think they are not serious let them stand.

Mr. Beach—Well, I would rather let the answer stand as it is than have any portion stricken out.

Judge Neilson—Well, let it stand as it is.

Mr. Beach—Well, does your Honor rule that we are not at liberty to give the balance of this conversation?

Judge Neilson—Yes, I think I am obliged to. I have thought of it a good deal.

The Court then adjourned until 11 o'clock on Friday morning.

THIRTIETH DAY'S PROCEEDINGS.

MRS. MOULTON SWEARS TO CONFESSIONS BY MR. BEECHER.

THE DEFENDANT SAID TO HAVE DETERMINED TO COMMIT SUICIDE—MRS. MOULTON'S EFFORTS TO DISUADE HIM—HER CONFIDENCE IN HIM LOST WHEN HE TURNED AGAINST HER HUSBAND—MRS. TILTON'S ALLEGED ADMISSIONS,

FRIDAY, Feb. 19, 1875.

As was expected the day before, Mrs. Francis D. Moulton was the first witness called to-day, but unexpectedly she was the only witness of the day. The lady gave her name as Emma C. Moulton, and said that she had been connected with Plymouth Church since 1858. She had known Mr. Beecher personally since 1871, and during four years he had called at her house frequently at all hours of the day, and sometimes late at night. Mrs. Moulton's

testimony related mainly to interviews between herself and Mr. Beecher, and between herself and Mrs. Tilton. The first one of importance that she recalled was in 1871, when, as the witness described the incidents, Mr. Beecher came into her parlor and took her hand, saying, "Do you know anything of this great sorrow of my life?" She replied that she did, and a very brief conversation followed. The next interview of importance that the witness related took place on June 2, 1873, and was three or four hours in duration. Mrs. Moulton gave her account of the details of this interview without hesitation and without being once assisted or interrupted by the counsel. The substance of it was that Mrs. Moulton informed Mr. Beecher that Mr. Tilton had threatened to publish the so-called letter of apology, whereupon Mr. Beecher said that if Mr. Tilton did that, it would be useless for him (Mr. Beecher) longer to live the thing down. Mrs. Moulton advised the Plymouth pastor to confess, but he said that he could not; he would die first. Then, according to Mrs. Moulton, Mr. Beecher said: "I have resolved to take my life. I have prepared a powder which I have at home on my library-table, which I shall take and sink quietly out of life."

The witness testified that at another time she said to Mr. Beecher, "I don't see how you can stand in your pulpit and preach to young men against the sin of adultery when you are implicated in it yourself." To this Mr. Beecher replied: "Having suffered what I have, and passed through the experience I have, I feel more fit for it than ever before." Mrs. Moulton's next important interview with Mr. Beecher was on July 13, 1874, after the call for the Plymouth Investigating Committee, when, according to the witness, Mr. Beecher denied having called the Committee. She states that she told Mr. Beecher that Mr. Tilton proposed to take his case into court, whereupon the preacher told her that Mr. Tilton had no case to take into court; he had condoned his wife's offense, and lived five years with her. Mr. Beecher said, according to Mrs. Moulton, "Let them do their worst, they can't convict me."

The witness also related conversations with Mrs. Tilton, at which the latter said that if she were called before the church, she would sacrifice her husband and deny everything. She excused Mr. Beecher, and assumed the blame herself, while Mr. Beecher insisted that it was all his fault.

It was nearly noon when Mr. Evarts began his cross-examination. The main portion of the testi-



mony elicited by him was a repetition of the interviews already given, every detail being entered into with extreme minuteness. Among other things called out were the facts that the counsel for the plaintiff take their meals at the house of Mr. Moulton, and that the witness has known since last July that her testimony would be wanted in this case. Among other questions, Mr. Evarts asked whether Mrs. Moulton ever told Mr. Beecher that Mr. Tilton was treacherous and hated him (Mr. Beecher). She did not recall those words, but thought she might have said that Mr. Tilton hated Mr. Beecher. She admitted that she told Mr. Tilton that if he turned upon her husband he should never enter her house again. Mrs. Woodhull's visits at Mr. Moulton's house were made a topic for examination upon both sides; Mrs. Moulton testifying that she allowed Mrs. Woodhull to come to the house to keep her still, while Mr. Evarts endeavored to show that there was a friendship towards Mrs. Woodhull and sympathy with her views. The cross-examination was not ended at the hour of adjournment, and Mrs. Moulton will take the witness-chair on Tuesday morning.

## THE PROCEEDINGS—VERBATIM.

### TESTIMONY OF MRS. EMMA C. MOULTON.

The Court met at 11 a. m., pursuant to adjournment. Mrs. Emma C. Moulton was sworn on behalf of the plaintiff.

Mr. Evarts—If your Honor please, we have not quite as much room as we need for the convenience of the counsel on our side.

Judge Neilson—Gentlemen will endeavor to make more room there.

Mr. Fullerton—Mrs. Moulton, where do you reside? A. 49 Remsen-st.

Q. You are the wife of Francis D. Moulton, I believe? A. Yes, Sir.

Q. And how long have you resided at 49 Remsen-st.? A. Since May, 1871.

Judge Neilson—I am requested by a note from the reporters to ask that counsel will consent that the answers be repeated, so that they will get the evidence. See if it is agreeable.

Mr. Beach—I think Mrs. Moulton's voice will be audible, Sir, when she gets a little accustomed to the strangeness of the place.

Mr. Fullerton—The house will be quiet in a moment, Sir. I think she will be able to be heard.

Judge Neilson—Well.

Mr. Fullerton—What connection, if any, have you had with Plymouth Church? A. I have been connected with Plymouth Church since 1858.

Q. As a communicant? A. Yes, Sir.

### MR. BEECHER'S INTIMACY WITH THE MOULTONS.

Q. How long have you known Mr. Henry Ward Beecher? A. I have only known him personally since 1871.

Q. Under what circumstances did you make his acquaintance? A. He came to the house to see Mr. Moulton.

Q. A little louder. A. He came to the house to see Mr. Moulton in reference to this case.

Q. When was it that he first came to the house in 1871, or the first time that you saw him there? A. I don't remember the first time that I saw him, but it was early in 1871.

Q. Were you absent any part of 1871, the early part of the year? A. I was in Narragansett.

Q. At what time did you go to Narragansett? A. I went down to spend the holidays; before Christmas I left home, and remained until the 2d of January.

Q. And did you return to Brooklyn on the 2d of January, 1871? A. Yes, Sir.

Q. And how soon after that was it that you saw Mr. Beecher at your house, 49 Remsen-st.? A. During that week, I think.

Q. During the first week? A. During the first week; yes, Sir.

Q. Now, from that time on, Mrs. Moulton, state whether Mr. Beecher visited at your house, and how often, as near as you can recollect? A. Sometimes twice a day, two or three times a week; sometimes every day in the week, when he has been in town.

Q. And at what hours of the day? A. At all hours; before Mr. Moulton was up in the morning; after he had retired at night; before the Friday night prayer meeting; after his Sunday evening service; after his morning service on Sunday, and at all hours of the day. I have known him to come to the house as late as 11 o'clock at night.

Q. With whom did he confer? A. With Mr. Moulton.

Q. Was that so in all cases, or did he sometimes confer with you? A. Sometimes with me.

Q. How early did he talk with you when calling there? A. With reference to this case?

Q. With reference to anything? A. I saw Mr. Beecher when he first came to the house, but the first time that he spoke to me of this case was, I think, in the Spring of 1871.

Q. Were you absent at any time after you returned from Narragansett in the Spring of 1871? A. I don't remember that I was.

Q. I will call your attention to Mr. Moulton's sickness. A. We were South for six weeks.

Q. Do you recollect what time you went and what time you returned from the South? A. I think we went in the latter part of March, some time in March, and returned in April some time. I have forgotten the date.

Q. How soon after you returned from the South did Mr. Beecher call at your house? A. I think the same day or the day following, as nearly as I can remember; very soon after.

Q. Did you have any conversation with Mr. Beecher soon after your return from the South? A. I don't remember that I had any very soon after.

Q. Well, when did you have the first conversation with Mr. Beecher in regard to any difficulty that he spoke of? A. I

don't remember whether it was before or after I returned from the South, but it was in the Spring of 1871, I think, late in the Spring.

#### MR. BEECHER DESCRIBED AS AT THE CONFES- SIONAL.

Q. Please state, Mrs. Moulton, what he said to you upon the first occasion when his troubles were the subject of conversation?

Mr. Evarts—Well, the conversation we want, as it was given.

Mr. Fullerton—That is what I shall give.

The Witness—He was waiting in the parlor for Mr. Moulton, and I went into the room. He took my hand and said: "Do you know anything of this great sorrow of my life?" and I said: "Yes." He said: "Then Frank has told you the facts, has he?" I said: "Yes." He said: "I am very glad that he has; I am very glad that there is one woman in this world to whom I can go and talk of my troubles without reserve." As nearly as I can remember, that was all of the conversation at that time.

Q. You were in the parlor then? A. Yes, Sir.

Q. And where was Mr. Moulton then? A. He was engaged with some one in the front room, up-stairs.

Q. And where did Mr. Beecher go to after this conversation? A. He went up to see Mr. Moulton.

Q. Did you see him again that day? A. I don't remember that I did.

Q. Did you see him after that? A. Yes, Sir, frequently.

Q. Where? A. In our house.

Q. Do you recollect of having any further conversation with him? A. Yes, he used often to speak to me about it.

Q. What would he say when he came to the house to see Mr. Moulton, when he addressed you?

Mr. Evarts—Well, your Honor, I object to a general question—"what would he say."

Mr. Fullerton—I have not asked what would he say. What did he say at any time when he came to your house to visit Mr. Moulton?

Mr. Evarts—Well, some particular time.

Mr. Fullerton—Well, it will be some particular time when she relates it. A. He would ask me if Mr. Moulton was still hopeful that this story might be kept quiet. He would ask me also the condition of Mr. Tilton's mind towards him—if he was friendly, or if he was angry or annoyed, or—that generally was his questions.

Q. Do you recollect anything that occurred on the first of June, 1871? No, I beg pardon; not that date, but about that date; any conversation that you had with Mr. Beecher? A. Not in 1871.

Q. Well, the next conversation, then, that you can recall with Mr. Beecher. State, if you please, when it was and what was said between you? A. The next conversation that I remember of any length was, I thought, in 1873.

Q. 1873. Very well. Then I will come down to 1873. You may state what occurred at that conversation to which you now allude. Fix the date as near as you can, Mrs. Moulton? A. I

think it was on the 2d of June, 1873. Mr. Tilton felt that he must publish—

Mr. Evarts—No matter about Mr. Tilton's feelings.

Mr. Fullerton—What did you say to Mr. Beecher or what did he say to you? A. Mr. Beecher said to me that if Mr. Tilton published his letter of apology he felt that it was useless trying any longer to live this down. He came in Monday morning. Mr. Moulton was still at the house, and after conversing with him for a few moments, he said, "I came to see your wife, not you, this morning."

#### MR. BEECHER HOPELESS AND DESPERATE.

Q. Whom did he address when he said that? A. He addressed Mr. Moulton; and they conversed for a short time together, and Mr. Moulton left the house and went to the office. Mr. Beecher lay down on the lounge, and I gave him a cover; and he said: "This is probably my last conversation with you. I feel that if Mr. Tilton publishes my letter of apology, it is useless for me to try any longer to live this down. I have never felt that I had much to hope for from Theodore; he has been faithless, he is a faithless man; he seems to lose sight of the fact that in striking at me, or in stating the truth concerning me, he sacrifices his wife, and if that letter of apology is published I might as well go out of life; it is useless trying to live it down." And I said: "Mr. Beecher, there is something better for you to do than that. I think that would be a very cowardly thing for you to do. Go down to your church and confess your crime; they will forgive you." He said: "No, I cannot do that; for the sake of the woman who has given me her love, for her children, for my family, for my church, for my influence throughout the whole world, that I can never do. I will die before I will confess it." And I said: "Sooner or later the truth in this case will come out. It is much better that you should take your case in your own hands, and state to your church—give to them a confession such as you could make to them, and I am sure they would forgive you." He said: "No; that I cannot do; I should be—my children would despise me. I could not go back to my home, and my church would not forgive me, they would not deal with me as you have done. There would be nothing left for me to do. My work would be finished. It would be better that I should go out of life than to remain any longer in it." And I said: "You could write for your paper. You could go to your farm and write." He said: "No; if they would not listen to hear me preach, they certainly would not read anything that I should write. Besides, my position in life is that of a spiritual and moral teacher. If I can no longer hold that position, then there is nothing left for me, and I am resolved to take my life. I have a powder at home on my library table which I have prepared, which I shall take, and shall sink quietly off as if going to sleep, without a struggle. I haven't any desire to live; I have nothing to live for; in fact, I pray for death as a happy release from all my trials and trouble; and I feel that if I publish now a card in *The Eagle* it will only be a temporary relief; that Mr. Tilton is likely to break out again at any other



time, and I feel that physically and mentally I am unable any longer to bear this strain, and I probably shall never come to see you again." And I felt very much grieved at it and begged him to go down to the church. I said, "Mr. Moulton will still stand by you; and, no matter what comes to you, I will always be your friend; and I am convinced that the only way out of this trouble, for you, is by telling the truth." He said that he would come to see me on the day following; that he had some gifts that he wished to dispose of—some little mementoes for different people, something which he wanted me to bear to Elizabeth, and something for different friends, with messages which he wanted me to bear for him; and he would come on the day following to see me. It was a long interview; Mr. Beecher was very much excited; he told me, with tears streaming down his face, what he had suffered; that he had suffered the tortures of the damned; that he was obliged to go home and wear a cheerful smile; that when he appeared in his church, he must appear at his best; that the slightest indication of weakness was a confession on his part, so that really I was the only person to whom he could come and act his natural self; to whom he could unburden his whole heart's trouble.

Q. How long did that interview last, Mrs. Moulton? A. I think for three or four hours.

Q. If you can recall anything else that was said during that interview, you will please state it? A. I don't remember of anything that occurred—.

Q. What time in the day did he leave? A. It was near the hour for lunch.

Q. Did you see him soon after that, Mrs. Moulton? A. Yes, Sir; I saw him the day, or day following.

Q. What took place when you next saw him? A. He said that he was very much depressed on that day, but that he felt more hopeful.

Q. Did he say anything about the card in *The Eagle*? A. I don't remember that he did.

Q. What, if anything, did he say in regard to the publication of the "Letter of Apology," so-called, in either of these interviews; if he said anything that you have not related, you will please state it?

Mr. Evarts—You mean either of these interviews in June?

Mr. Fullerton—Yes, Sir.

The Witness—I don't remember, at that time, that he spoke to me of the "letter of apology."

Q. Well, recurring again to this interview that took place a few days after this long conversation, can you repeat anything else that he said at that time? A. I don't remember just at that time.

Q. Did he ever speak to you in regard to Mrs. Tilton? A. Yes, Sir.

Q. State, please, what he said in regard to her?

Mr. Evarts—At either of these interviews?

Mr. Fullerton—At any time.

Mr. Evarts—The time should be fixed.

The Witness—He nearly always spoke—

Mr. Fullerton—Well, I will get the time, Mr. Evarts.

The Witness—He nearly always spoke to me of Elizabeth, of his great love for her; wanted me to respect her, and to have regard for her; go and see her; try and comfort her and console her; see if there was anything that he could do for her; if she was in need of anything; that I, a woman, knew what women needed and wanted most.

Q. Did you ever carry any messages from him to her? A. Yes, Sir.

#### MRS. TILTON TAKES ALL THE BLAME ON HERSELF.

Q. And from her to him—if so, state what those messages were? A. I repeated to Mr. Beecher a conversation which I had with Mrs. Tilton. She said that she felt very sorry for me; even more sympathy for me than for herself, because that I had lost faith in Mr. Beecher; because I was unable any longer to attend the Church; she begged me to go back to the Church and believe in Mr. Beecher; and I said, "Elizabeth, how can you ask me to go back to the Church? How can you ask me to take the communion from his hands knowing what I do of his life?" And she said: "I want you to believe in him; he is a good man; it was not his fault; he is not responsible for the crime; I am the one that is to blame; I invited it." And I said: "I think that I might hear Mr. Beecher preach, and perhaps derive some benefit from his sermon; but I can never go back to the Church with the same faith that I had in him years ago."

Q. Did you report this conversation to Mr. Beecher? A. I did.

Q. How soon after the conversation occurred? A. Perhaps a day or two after; I don't exactly remember how soon.

Q. Now, had you any further conversation with Elizabeth that you reported to Mr. Beecher? A. I had.

Q. State, if you please, what it was. A. I think it was at the time that Mr. Beecher was—Mr. Tilton appeared down at the Church—that I called to see Elizabeth and I said: "If you are called before the Church, what are you going to do to save Mr. Beecher?" She said: "I shall sacrifice my husband and deny everything." I said: "Will you allow your husband to go down with the truth?" She said: "I think I should be justified in stating falsely under the circumstances; I think, for the sake of Mr. Beecher, for the sake of the influence on the world, for my own position, for my children, I think it is my duty to deny it."

Q. And did you report this to Mr. Beecher? A. I did.

Q. What reply, if any, did he make? A. He said, "Poor child, she is trying to repair the wrong she has done in confessing it—in confessing her sin. But it is too late."

#### MRS. TILTON REPROACHED FOR CONFESSING

Q. Did he say anything to you in respect of the length of time that Elizabeth had permitted him to be in ignorance of the fact that she had confessed? A. He did.

Q. What did he say upon that subject? A. In talking with me one day, he said that it was very cruel that Elizabeth should have confessed at all; it was very unjust to him; he could not understand it; he didn't know

why she should have done it. But that she should have allowed him to visit her for six months after she had confessed to her husband, was even a greater mystery to him—subjecting him to unpleasant greetings and meetings with Mr. Tilton; that he could not understand why she allowed him to visit her house without having told him that she had confessed to her husband.

MR. BEECHER BEGS MRS. MOULTON TO RETURN TO PLYMOUTH CHURCH.

Q. Did you ever say anything to Mr. Beecher about returning to the Church? A. I did.

Q. What did you say to him upon that subject? A. I told him how much I missed the Church, the influence of his sermons; I had been a member of his Church for a great many years, and I had believed in him, and it was very hard to be deprived of hearing him; but knowing what I did of him I could not go back to the Church with the same feeling. He used to beg me to come to church; he said if I knew what a comfort it was to him to see my face in the congregation, that I would certainly come; that he felt that he had repented of his sin and been forgiven; that he was better fitted now than ever before in his whole life to do great good. I once said to Mr. Beecher: "I don't see how you can stand in your pulpit and preach to young men against the sin of adultery, when you are implicated in it so deeply yourself," and he said: "Having suffered what I have; having passed through the experiences that I have, I feel that I am better fitted than ever before to preach!"

MRS. MOULTON'S MEDIATION.

Q. Did he ever, in any conversation with you, say anything in respect to Elizabeth's tendency to talk about this thing? A. He did.

Q. State what he said upon that subject? A. He said that Elizabeth was continually making mistakes; that she meant well, but that she had not the judgment or the discretion—she allowed everybody to talk to her about it; that if she could only go away, or if some plan could be adopted by which Elizabeth could be kept quiet—that she would not be allowed to talk with anybody about it; he thought that it was better that she should never speak to anybody, and he often said to me, "When you see Elizabeth tell her never to speak with anybody concerning this case; to refuse to talk with anybody about it."

Q. Did he ever send any message to her by you as to her demeanor in her household, and what she should do there? A. Yes, Sir.

Q. State, if you please, what that message was? A. I once repeated to Mr. Beecher a conversation that I had had with Mrs. Tilton when she felt that she could no longer remain with Mr. Tilton; that he was continually referring to this sin which she had committed; that he would not let it die out; that he would not give her an opportunity—

Mr. Evarts—Mrs. Moulton, is this what you said to Mr. Beecher?

Mr. Fullerton—So she states.

Mr. Evarts—I ask her that.

The Witness—Yes, Sir.

Mr. Fullerton—I will ask her.

The Witness—And that she felt that she could not live with him any longer; that she was going home to live with her mother. Mr. Beecher said: "Tell Elizabeth for me that for my sake she must continue to live with Theodore, to be to him a good wife, to make his home happy and as attractive as possible. I know it is hard, I know she has much to endure, but she must do it for my sake, for her own, and for the children. I have a family; she has nothing to hope for with me, and the only way in which she can ever see me is by living with Theodore, and being to him a true and good wife."

Q. State, if you please, again, what reasons she gave for wishing to leave her husband? A. Because Mr. Tilton was referring to this sin which she had committed.

Q. And would not permit her to do what? A. He would not permit her to live a better life with him.

LETTERS INT. DUCED.

Q. Now, Mrs. Moulton, look at the paper I show to you and say whether you ever saw it before? A. Yes, Sir.

Q. From whom did you receive it? A. Mr. Beecher.

Q. When, as near as you recollect? A. I think in June.

Q. Of what year? A. 1878.

Mr. Fullerton—I propose to read that in evidence. [Paper handed to defendant's counsel.]

Mr. Fullerton [Reading]:

MY DEAR MRS. MOULTON: Don't wake Frank up to give him the inclosed, but as soon as he is awake and ready, please hand it to him. What a glorious morning! The earth is not far from Heaven to-day. I am tranquil and hopeful, but not of men, but of God.

Truly yours, with great respect and affection.

H. W. BEECHER.

Mr. Beach—The jury don't hear you—that last sentence.

Mr. Fullerton read the letter again, beginning, "What a glorious morning!"

[Letter marked "Exhibit 106."]

Q. Now, Mrs. Moulton, please look at the paper that I show you, which is Exhibit 23, and say whether the inclosure spoken of in the letter to you was that letter? A. Yes, Sir.

Mr. Fullerton—That has already been read in evidence; it is a letter of June 1st, 1878, and is marked Exhibit 22.

Q. Now, Mrs. Moulton, what I wish to ask you is, whether this letter which I have shown you was received before or after the long conversation in the parlor which you have already related? A. The long conversation was held up-stairs.

Q. Well, was it before or after the receipt of this letter? A. It was the Monday after.

Q. Now, if in any conversation with Mr. Beecher respecting this trouble he took blame upon himself in any way, I wish you would relate it? A. When I repeated to him my conversation with Mrs. Tilton, when she said it was not Mr. Beecher's fault, it was hers, he said: "It is not her fault—it is my fault; I am to blame; Elizabeth was not to blame; she is a good woman and I want you always to love her and to respect her."

Q. Whatever he may have said in any conversation with re-



gard to his affection for her, or hers for him, if there is anything on that subject which you have not stated, please to state it now? A. I don't remember any particular conversation; Mr. Beecher always spoke to me of his love for Elizabeth.

#### MRS. MOULTON AVERSE TO KNOWING MRS. WOODHULL.

Q. Then I call your attention to Mrs. Woodhull. What occurred between you and Mr. Beecher, if anything, in respect to that woman? A. I was very much opposed to have Mrs. Woodhull at my house, but Mr. Tilton and Mr. Moulton both deemed it best and necessary for the interest of all concerned that she should come, and I one morning spoke to Mr. Beecher, and said: "I am very much annoyed because Mrs. Woodhull is coming to the house, but Frank and Mr. Tilton, both of them, think it necessary and best." I said: "What do you think about it, Mr. Beecher?" He said: "I don't see how it can possibly do you any harm; I think it is a duty you owe to Frank to coöperate with him in trying to keep the story quiet."

Q. How soon after that conversation did she come? A. I do not remember how soon after.

Q. How frequently did she come to your house? A. I cannot tell how many times she has been to the house.

Q. State your object in permitting her to come, and in entertaining her?

Mr. Evarts—That I object to. It does not appear that she had any control of the matter; it was her husband's house and his directions. In the second place, it does not appear that she did permit her. What her object is has nothing to do with the matter in any way.

Mr. Fullerton—I think it is a proper question, Sir.

Judge Neilson—I think she may answer the question.

Mr. Fullerton—Now, you may answer.

The Witness—Please to put your question again.

#### THE OBJECT IN TOLERATING FAMILIARITY WITH MRS. WOODHULL.

Mr. Fullerton—What was your object in consenting or allowing Mrs. Woodhull to visit your house, and in entertaining her? A. Because she knew all the facts in this case. Mr. Moulton was doing his utmost to keep it quiet. He thought I knew nothing against her—which I certainly did not know anything personally against her; I knew only of her as I had heard from the public—the public opinion with regard to her; and he thought that I ought to allow her to come to the house; that they were treating her in a friendly way in order to hush up the story, if possible.

Q. At that time, had she threatened to publish the story? A. Yes, Sir.

Q. Do you recollect the publication in *The New-York World*, of Mrs. Woodhull, threatening to make the expose? A. Yes, Sir, I have a faint recollection of it.

Q. And this conversation was after that, was it? A. Yes, Sir.

Q. Now, did you do anything else to exert a kindly influence

with Mrs. Woodhull besides receiving her at your house? A. Do you refer to visiting her?

Q. Yes. A. Yes, Sir; I went to Mrs. Woodhull's house, and brought her to my house three or four times.

Mr. Evarts—Went to Mrs. Woodhull's house does she say?

Mr. Fullerton—Yes, and brought her to her house three or four times. [To the witness.] Now, Mrs. Moulton, was that with the same object? A. With the same object.

Q. And at whose request did you do it? A. Sometimes—always, I think, at Mr. Moulton's.

Q. Did you take any one with you to her house? A. Yes, Sir.

Q. Whom did you take? A. The first time I visited her I went with Mr. Tilton; Mr. Moulton was sick and unable to go, and he asked me to go; the next time I took Mr. Moulton's mother; the third time I took my son Frank.

Q. And what was the demeanor of Mrs. Woodhull when she visited your house, and when you visited her house? A. So far as I knew, she always behaved in a ladylike manner.

Q. So far as you observed? A. So far as I observed.

Q. And your visits to her house, I understood you, were with the same object—to exercise an influence over her, to prevent this publication that she had threatened? A. Yes, Sir.

#### THE FIRST COLDNESS BETWEEN MR. BEECHER AND MR. MOULTON.

Q. Do you recollect an occurrence some time early in July, when the statement was talked of, in 1873—1874? A. 1874?

Q. Yes? A. Yes, Sir.

Q. What occurred then? A. This last July do you refer to?

Q. I refer to the 13th of July, when the contemplated statement was under discussion? A. May I be allowed to state the particulars?

Q. Yes, state the particulars.

Mr. Evarts—Well, what occurred with Mr. Beecher?

Mr. Fullerton—What occurred between yourself and Mr. Beecher upon that subject? A. Mr. Beecher came to our house on the 13th of July, I think; it was soon after the Bacon letter; Mr. Tilton had published a card in *The Eagle*, saying that before ten days from that time he would make a statement of the case to the public. Mr. Beecher came to the house, and I met him and took him to the study, and I said: "Mr. Beecher, what have you done that has offended Frank? He is very angry with you." He said: "I don't know." I said: "I am very sorry. Is he not angry because you have called the Committee?" He said: "I did not call the Committee; my people called the Committee; I certainly could not object to an investigation." I said: "I don't know what has happened, but Frank is very angry with you, and I am very sorry for it." He said: "I am very sorry, and I have intrusted myself wholly to Frank throughout the case; I have been willing to be led by him, sometimes against my better judgment; but with relation to the Church, I do not consider that he has anything to do with my non-agreement of the Church affairs. Besides, I could not possibly object to have an investigation

when my people wanted it." Soon after Frank came into the room, and I went down-stairs. He went up to Frank, who read to Mr. Beecher a letter that he proposed to read to the Committee. When I went up-stairs I asked Mr. Beecher into the front room, and Mr. Moulton said to Mr. Beecher, in my presence: "Then you think my statement for the Committee an honorable one?" Mr. Beecher said: "I do; perfectly so."

#### MR. BEECHER HOPEFUL AND DESPERATE.

Mr. Moulton left and went down stairs, and I said to Mr. Beecher: "Do you know what Mr. Tilton proposes to do—what he proposes in *The Eagle*, to-night." He said: "No." I said: "He proposes to give a statement of the facts to the public in ten days; and if so, it will ruin you." He said: "How so?" I said: "He proposes to publish your written confession." He said: "I have never put any confession in writing." I said: "But your letter to Frank." He said: "If that letter is published, it will be a breach of confidence." I said: "I don't know anything about that, but I think if the statement is published, as Mr. Tilton proposes, it certainly will ruin you; and if he fails in this he will take the case into Court." He said: "He cannot take the case into Court; he has forgiven his wife's offense, and has lived with her four years; he cannot convict me." I said: "He will—he can convict you." And I said: "I don't think it is even now too late for you to go down and confess to the church; there is no other way out for you; and if you had done it when I first advised it, it would have been better." He said: "I don't consider it so; I think your advice from first to last has been bad; the public are not prepared for a confession such as I would have to make." I said: "If you had confessed it then, you would have been better off. Now you have the original crime and four years of perjury and lying to an awer for." He said: "I never will confess it; I will die before I confess it."

Q. Do you recollect anything else that occurred at that interview? A. He was very angry; he said that he had always regarded Theodore as a faithless man; that he had never felt he had much to hope from him; but he said: "Now I have made up my mind to let them come on and do their worst; they cannot convict me."

Q. Did he ever speak of his brothers and sisters in any way; and if so, how? A. After a conversation with Mr. Moulton in the front room, and after saying good-bye to us, he came to me and took my hand in his and said: "You are the best friend I have in this world; you are dearer to me than any sister I have, for you, knowing all the truth, knowing that I am guilty, still stand by me, while they believe me innocent."

Q. Do you recollect when that conversation was? A. I cannot recollect the date.

Q. Did he give any reason why he would rather talk to you than to them? A. Because I knew the truth—because I knew all the truth.

Q. Did you ever make an observation to Mr. Beecher to this effect, that you always supposed a woman was just as much to blame as a man, and if so, what reply did he make to that?

Mr. Evarts—I object to a leading question of that kind to his own witness.

Judge Neilson—Perhaps the inquiry should be whether any observation was made on that subject, and if so, give the words.

Q. Was there any conversation had between you and Mr. Beecher as to the relative or comparative guilt attached to persons who had committed this offense of adultery? A. Yes; once Mr. Beecher was at our house and suffering great remorse at what he had done.

Mr. Evarts—Let us have what was said.

Mr. Fullerton—What did Mr. Beecher say as evidence of his remorse? A. That he had brought so much trouble and sorrow to himself and Elizabeth and the household. I said: "I think a woman is as much to blame as a man; she was the mother of five or six children, and it does not seem to me possible that she could have done what she had done without knowing what she was doing, and she is certainly as much to blame as you are." He said: "No, she is not to blame; it is my fault; I take all the responsibility and all the blame on myself."

Q. Do you recollect when that conversation was? A. I don't recollect the date.

#### MR. GEORGE C. ROBINSON SEEKING FOR THE TRUTH.

Q. Did you ever have any conversation with Mr. George C. Robinson which you repeated to Mr. Beecher? A. Yes, Sir.

Q. What was the conversation which you thus repeated?

Mr. Evarts—You mean what was said to Mr. Beecher.

Mr. Fullerton—The conversation which she repeated to Mr. Beecher.

Mr. Evarts—What she repeated to Mr. Beecher in the conversation should be the question, and not what the conversation was with Mr. Robinson.

Mr. Fullerton—I will frame my question in my own way. [To the witness]: What was the conversation with Mr. Robinson which you afterwards repeated to Mr. Beecher?

Mr. Evarts—I object to that. The question should be, "Did you have a conversation with Mr. Robinson," as an inducement; then, "Did you repeat it to Mr. Beecher, and if you did, state what you told him."

Judge Neilson—It leads to the same result, Mr. Fullerton.

Mr. Fullerton—If it leads to the same result exactly, I claim my own way.

Judge Neilson—I think I would accept the suggestion. It is just as well—first the fact that she had a conversation, and then what she stated to Mr. Beecher.

Mr. Beach—The witness was going to say what she told Mr. Beecher.

Mr. Fullerton—She will answer the question properly.

The Witness—I told Mr. Beecher that Mr. George C. Robinson had spoken to me of his frequent visits at the office to see Mr. Moulton, and that he thought it very strange that he should select Mr. Moulton, who was not a church man; that Mr. Beecher, the first man in the city, having a host of friends at his back, it was very strange that



he should go to the office to see Mr. Moulton; that he did not understand the reason; that he thought there must be some great trouble, but he did not understand what it was; that he, realized that his brother, Jeremiah Robinson, knew the facts, and Mr. Moulton and Mr. Woodruff, and he felt that I ought to tell him what the trouble was; that he was a leading man in Plymouth Church, and had been a deacon, and was still attending Mr. Beecher's church, and meeting him constantly, and it was rather embarrassing for him, and he felt that, perhaps, it might be embarrassing for Mr. Beecher, and he would like to know the truth. He said that sometimes he thought that Mr. Beecher had appropriated the Church money or had been guilty of theft or something of that kind; that he realized it was some great crime which he had committed. I said: "No, it is not that; he has been guilty of adultery with Mrs. Tilton." He said: "Well, that I can hardly believe; it does not seem possible. A man that I have believed in for years, under whose preaching I have sat for so many years, who has preached against that one particular sin—I cannot believe that it is possible that he is guilty." I said: "I am very sorry to have to tell you that he is." He said: "How do you know it?" I said: "From confessions from both parties—both Mrs. Tilton and Mr. Beecher told me. I told Mr. Beecher that I had told Mr. Robinson, feeling that Mr. Beecher might be embarrassed, and that it might be easier for him to talk to Mr. Robinson now that Mr. Robinson knew the truth, as he frequently met him in the office and at our house."

Q. What reply did Mr. Beecher make, if any, when you told him that? A. He said he was very glad I had told him; that he was willing to abide by anything I considered best.

#### WHEN MRS. MOULTON LEFT PLYMOUTH CHURCH.

Q. Now, Mrs. Moulton, up to what time did you continue to take the communion at Plymouth Church? A. I have never taken communion at the Church since I knew the truth of this case.

Q. Did you take the communion up to the time of your learning the facts in this case? A. Yes; I was not always there on Communion Sundays, but I never have attended any other Church.

Q. And since that time have you attended Plymouth Church? A. I have.

Q. How frequently? A. I don't know how many times.

Q. Under what circumstances did you go? A. When there have been friends staying at our house who knew that I belonged to Mr. Beecher's Church, and had been always an admirer of Mr. Beecher, and they would express a desire to go, and I went with them, and Mr. Beecher has asked me repeatedly to continue coming to the Church.

Mr. Fullerton—[Turning to Mr. Evarts.] Now you may ask.

#### CROSS-EXAMINATION OF MRS. MOULTON.

Mr. Evarts—Mrs. Moulton, how long have you been married? A. I was married in 1860, the 22d of November.

Q. What family have you? A. I have one son

Q. How old is he? A. Thirteen years old.

Q. Has Mr. Moulton at any time been an attendant at your church? A. Not a regular attendant.

Q. Has he at any time been a frequent attendant? A. No, Sir.

Q. Where has he gone to church? A. He has not attended church anywhere.

Q. Not since your marriage? A. Not regularly; no, Sir.

Q. Has he with any frequency attended Church since your marriage? A. No, Sir; I don't know that I could say he has frequently.

#### THE WITNESS'S ACQUAINTANCE WITH MRS. WOODHULL.

Q. When did you first make the acquaintance of Mrs. Woodhull? A. I cannot tell you the date.

Q. As near as you can? A. It was about the time she proposed to publish this story.

Q. Do you mean about May, 1871? A. If that was the time that she threatened to publish the story, it is; yes, Sir.

Q. Was it before or after her threat? A. It was before.

Q. Before her threat? A. Or about the time.

Q. Which was it, before or after? A. It must have been about the time.

Q. Can you say whether it was before or after her threat? A. I don't remember about the date.

Q. Was it before? A. It might possibly have been.

Q. Don't you know that it was before? A. I don't remember.

Q. On your best recollection, Mrs. Moulton, was it not before? A. I cannot state positively. I know it was with reference to this case that I made her acquaintance.

Q. Well, now, upon your best recollection, was it not before she published her threat? A. I can't say, Sir.

Q. How did you make her acquaintance, and by whose introduction? A. Mr. Moulton's and Mr. Tilton's.

Q. Where? A. Brought her to our house.

Q. And how was she introduced to you by those gentlemen? A. As Mrs. Woodhull.

Q. Were you aware of her public repute at that time? A. I knew only in a general way of her reputation.

Q. You did know of her public repute, didn't you? A. I knew something about it; yes, Sir.

Q. You do know as much as other people about her public repute, don't you?

Mr. Fullerton—That is scarcely proper.

Mr. Evarts—I don't know that it is not proper. I would not have asked it if it was not proper.

Mr. Fullerton—It don't follow that you would not have asked it if it was not proper.

Q. What did you know about her public repute? Q. Well, I had heard that she held peculiar views with relation to marriage, &c. I only knew in a general way that she was not considered—I don't know exactly what to say, not that she was an immoral woman, but she was a woman who held loose views in regard to divorce and marriage, was all that I knew and all that I heard. I had heard that that was her reputation

Q. Were you informed beforehand that she was to be brought to your house? A. It was spoken of; yes, Sir.

Q. And did you know of the appointed time before she came? A. They spoke to me about it on Saturday; I knew she was to come on the next day.

Q. But that was the night of her coming there? A. They wanted to see her with reference to this story which she had proposed to publish, or which she knew about.

Q. You considered your house selected as the proper place of conference between these two gentlemen and this lady, did you? A. I considered it Mr. Moulton's house.

Q. I know it is Mr. Moulton's house. That you understood to be the reason, the only reason of her coming to that house, did you? A. Yes, Sir.

Q. Had you given your consent to it? A. I did not give my consent that I know of.

Q. Then when she came you had not given your consent? A. I don't think that I had given my consent by word; no, Sir.

Q. Now, madam, how frequently was this lady at your house? A. I cannot state how many times she was there.

Q. Was she there a dozen times? A. It is possible that she was; I don't know.

MRS. MOULTON'S CALLS ON MRS. WOODHULL.

Q. How frequently were you at her house? A. I have stated three times that I remember.

Q. Were you not there more times than that? A. I don't remember that I was; no, Sir.

Q. Now, when you went with Mr. Tilton to this lady's house, what was the occasion of this visit? A. Mr. Moulton wanted me to go, and Mr. Tilton wanted to see Mrs. Woodhull in reference to something in the case, I don't know what.

Q. What was the need of your going? A. Mr. Tilton wanted Mr. Moulton to go, but he was sick, and Mr. Moulton asked me to go in his stead, and I went. I presume I went because Mr. Moulton asked me to go.

Q. You did not go with any alacrity? A. I don't remember that I did.

Q. Don't you know that you went because Mr. Moulton required you to go? A. I don't think that Mr. Moulton required me to go; he made the request that I should go.

Q. Had you an aversion to going? A. I don't know that I had.

Q. You know one way or the other, don't you, whether you had an aversion to going or not? A. I don't know that I had any aversion to going.

Q. Didn't you require more urging on the part of your husband before you were willing to go? A. I don't remember that I was urged.

Q. Have you no impression on that subject? A. I don't remember that I was urged to go.

Q. Have you no impression as to whether you were urged or not, or whether you went very unwillingly? A. I don't remember that I went very unwillingly.

Q. Do you remember that you went very willingly? A. I don't remember that, Sir.

Q. When you got to the house of Mrs. Woodhull what oc-

curred as to your introduction or reception by that lady? A. We were shown into the parlor by the servant; Mrs. Woodhull came in; there were other people in the parlor; I don't remember their names. Mr. Tilton held a few moments' conversation with Mrs. Woodhull, and I did the same, on general topics. We then left.

Q. Do you mean you both talked on general terms with her? A. I don't know what Mr. Tilton talked about.

Q. You didn't hear that interview? A. We were all present in the room together, but I don't know what Mr. Tilton talked about.

Q. And then you came away? A. Yes, Sir.

Q. Did Mr. Tilton return with you to your own house? A. I think he did.

Q. When was this? A. I cannot remember the day or time.

Q. About when was it? A. I could not tell you; I don't remember it.

Q. What year was it? A. It was the year I first met Mrs. Woodhull.

Q. Was it not soon after you first met her? A. I don't remember how soon.

Q. Was this the first visit you made to her house? A. Yes, Sir.

Q. Now, when was the next one made? A. I don't remember.

Q. Who went with you the next time? A. Mr. Moulton's mother.

Q. How did that visit come about? A. They wanted to see Mrs. Woodhull.

Q. Who wanted to see her? A. Mr. Moulton and Mr. Tilton, and they asked me to take a carriage and go over for her. Mrs. Moulton, my mother, was staying at the house, and I asked her to go with me.

Q. And you went over there and fetched Mrs. Woodhull? A. Yes, Sir.

Q. At your husband's request? A. Yes, Sir.

Q. Did you go then unwillingly or willingly? A. I don't remember that I was either willing or unwilling. I simply went because Mr. Moulton asked me.

Q. Because Mr. Moulton desired you. Did you fetch her? A. I did.

Q. And did you take her back? A. I don't remember. I think we sent her back in a carriage, alone, if I remember right.

Q. And you don't remember whether you went or not with her? A. I don't remember, positively, but I don't think I went with her.

Q. Is not that a matter which would fix itself in your mind a little, if it had happened? A. I don't know that it should.

Q. When was this? A. I don't remember the date.

Q. Nor the year? A. No, Sir; I think it must have been in the year I first met her.

Q. Now, do you know whether Mr. Tilton and your husband could not go and see her instead of sending for her? A. I don't know why they could not.



Q. There was not any reason that you know of, was there?  
A. If there was any reason given I forget what it was.

Q. Was Mr. Tilton at the house when you started on this errand? A. I don't remember, but I think he must have been at the house.

Q. And they were both there, your husband and Mr. Tilton, when you returned with Mrs. Woodhull, were they not? A. I think so.

Q. Was this interview between Mrs. Woodhull, Mr. Tilton and your husband on this visit to which you brought her a private one, or did you take any part in it? A. I took no part in it.

Q. It was private, then, was it not? A. Yes, Sir.

Q. How long did it continue? A. That I don't remember.

Q. Several hours? A. It might have been.

Q. And in what room was it held? A. I don't remember that.

Q. Now, you made another visit to this lady? A. Yes, Sir.

Q. And then you took your son. How old was he then? A. He must have been eleven or twelve years old. I don't remember the year it was that I went for Mrs. Woodhull.

Q. This third visit? A. I think all my visits were made in that same year.

Q. Then, how old would he have been? A. He is thirteen years old now.

Q. That would make him about nine, by my reckoning. Was that about his age? Don't you remember how old the boy was? A. I cannot tell you just how old he was.

Q. Do you remember what sized boy he was when you made this visit to Mrs. Woodhull? A. Yes, Sir; I remember he was a boy with short jackets.

Q. How came you to make that visit? A. At the request of Mr. Moulton and Mr. Tilton.

Q. Both of them? A. Yes, Sir.

Q. Were they both at the house? A. I think so.

Q. And how was the subject introduced to you by those gentlemen? A. They wanted to see Mrs. Woodhull with reference to something in the case, and would like me to go there and bring her to the house.

Q. Was there anything to prevent their going to see her that you know of? A. Not that I know of.

Q. Did you go in a carriage then? A. Yes, Sir.

Q. Your own carriage? A. No, Sir.

Q. What time of day was this? A. I have forgotten the time of day.

Q. Do you remember whether it was the forenoon, or afternoon or evening? A. I don't think it was in the forenoon; I think it was probably in the afternoon or evening.

Q. Don't you remember whether it was afternoon or evening? A. No, Sir.

Q. Then, it might have been evening that you went? A. I don't remember whether it was afternoon or evening.

Q. Was the carriage sent for to take you? A. Yes, Sir.

Q. Whence was it procured? A. From the livery stable; I don't know what stable, now.

Q. From your usual livery stable? A. Yes, Sir; I presume so.

Q. What livery stable was that? A. I don't remember whether it was from Washburn's in Pacific street; I forget the man who then supplied us with carriages.

Q. It was either from Washburn, in Pacific street, or from where else? A. Either from Washburn's or Robertson's in State street; I think there was a stable in State street at that time.

Q. Can you not remember when you got to Mrs. Woodhull's, whether it was afternoon or evening? A. No, Sir; I don't remember.

Q. Did you find her and bring her? A. Yes, Sir.

Q. How long an interview did she have with Mr. Tilton and your husband at that time? A. I don't remember how long.

Q. Was it several hours? A. It might have been.

Q. Did you take her back? A. I think not.

Q. Are you not sure whether you took her back or not? A. I would not like to say positively; I do not remember.

Q. Do you remember either of those visits distinctly, that it was in the day-time? A. No, Sir; I do not remember.

Q. Any one of the three visits? A. No, Sir.

Q. When Mrs. Woodhull came to your house at other times than these visits that you have named, was she there as a guest with other company, or was she there upon an interview of a private nature? A. I remember that she once took supper at our house with Mr. Beecher, Mr. Tilton, and I forget if there were any other strangers at the table.

Q. When was that? A. I think it must have been in the Summer of 1871.

Q. Was it by free invitation on your part that she came there? A. I don't remember that I invited her.

Q. Was it a set invitation, or was it a casual presence of hers? A. I don't remember.

Q. Do you remember whether Mr. Beecher was invited by you or not? A. I don't remember that.

Q. Or whether his presence there was casual? A. I don't remember.

Q. Don't you remember that your husband brought him in without your having expected him or knowing that he was coming? A. I don't remember.

Q. You don't remember anything about it? A. I remember Mr. Beecher was there, but how he came there, whether by special invitation or casually, I don't remember.

Q. You have no recollection whether, when Mr. Beecher came there, he came brought by your husband without your expecting him or not? A. I don't remember; no, Sir.

#### MRS. WOODHULL'S WAY OF SALUTATION.

Q. Now, Mrs. Moulton, do you remember an occasion when Mrs. Woodhull came to your house and Mr. Moulton was there, and Mr. Tilton was there, and you were there, and in your husband's room, I suppose—do you remember Mrs. Woodhull coming there? A. Remember her coming in the room?

Q. Yes. A. Yes, Sir.

Q. Do you remember how she saluted you and your husband and Mr. Tilton on that occasion? A. I do not understand your question.

Q. How she saluted you three persons? A. I know she always saluted me in a ladylike way—in the usual way.

Q. Do you remember that she saluted Mr. Tilton, Mr. Moulton and yourself, with a kiss? A. I remember that she has kissed me.

Q. Do you remember that she saluted each of you, on that occasion, with a kiss? A. I do not remember that.

MRS. MOULTON'S MEMORY OF THE INTERVIEWS  
WITH MR. BEECHER.

Q. Now, Mrs. Moulton, how early did you learn what it was desired that you should be a witness in this case?

A. Since Mr. Beecher made his statement.

Q. That was the first, was it? A. I think so.

Q. Do you mean his public published statement of last year?

A. Yes, Sir.

Q. From whom did you learn that you were desired to be a witness? A. I think from Mr. Moulton.

Q. And from that time to this has the subject of your being a witness in this case been a frequent one between your husband and yourself? A. No, Sir, not a very frequent one.

Q. Has it been repeatedly a subject of conversation? A. I have spoken of it to him a number of times.

Q. And he to you? A. Yes, Sir.

Q. Have you since this time ever been requested to write out in any way what your recollection or your statement would be? A. Mr. Frank Woodruff thought that I owed it to Mr. Moulton, after Mr. Beecher made his statement, that I should publish a card stating what I knew concerning this case.

Q. I asked you if you had been requested to write it out in any way? A. I said Mr. Woodruff once made that request.

Q. Did Mr. Moulton ever make that request? A. No, Sir.

Q. I do not mean the request of publishing a card, but the request of writing out what you might know or say? A. No, Sir; he never made such a request.

Q. Have you at any time written out what you proposed to say? A. No, Sir.

Q. So that the conversations that you have given here to-day, you have given by your unassisted memory, have you? A. Yes, Sir.

Q. And these are conversations that occurred something like four years ago, or the nearest, I think, spoken of, two years ago, with the exception of one of last Summer? A. Yes, Sir.

Q. And you have given these conversations as conversations of some considerable duration between you and Mr. Beecher. Are you at all confident that you repeat the very words at either of these conversations? A. I know that some of the words are Mr. Beecher's. I have given you the substance of his interview with me, as near as possible.

Q. Are you at all confident that you used, in giving this narrative, the words as used either by Mr. Beecher or yourself? A. I have endeavored to give you Mr. Beecher's words.

Q. Still, my question remains unanswered. Are you at all confident that, in giving these conversations, you have given

the words used either by yourself or Mr. Beecher? A. I have, in some instances, given you Mr. Beecher's exact words.

Q. And you have no record, other than your memory, of them? A. No, Sir.

Q. And have never had? A. No, Sir.

Q. And never had any idea of being called upon to repeat them to any person, had you? A. No, Sir.

Q. When they occurred? A. No, Sir.

Q. Did you understand that any of these considerations between yourself and Mr. Beecher were given on either hand with the right or the liberty to either of you to repeat them at your will? A. I understood that I was not to repeat them, except in a case of this kind, where I am to state the truth.

Q. Of course there are exceptions. That was your understanding of the conversations, therefore you didn't treasure them in your memory with a view of repeating them ever? A. I didn't seek to treasure them, but I could never forget my interviews with Mr. Beecher.

Q. Do you mean that all your interviews with Mr. Beecher you never shall forget them? A. I don't think I shall ever forget them.

Q. Mrs. Moulton, how frequently did you have interviews with Mr. Beecher at your house without the presence of your husband or Mr. Tilton, either while he had called upon them and was waiting, or before he left, after such calls? A. I don't remember but three or four interviews with Mr. Beecher alone. I would often meet him on the stairs or in the hall.

Q. Casually, as he came, or as he went? A. Yes, Sir.

Q. In reference to these interviews with Mr. Moulton. So that the three or four interviews that you have spoken of are, you think, the only interviews of this kind that you had with Mr. Beecher, the only interviews separate from your husband or Mr. Tilton? A. The only interviews of any length; yes, Sir.

Q. Well, the only interviews that are impressed upon your mind?

Mr. Beach—Oh, no.

Mr. Evarts—I am asking.

Mr. Beach—Very well. She has told you.

Mr. Evarts—She has not yet.

The Witness—I remember of meeting Mr. Beecher very frequently, but not, as I said before, of any length; the interviews were not long.

Q. Anything that made any impression on your mind at any other interviews? A. I remember of his coming to the house on Sunday evening before his lecture—before his Friday night meeting, and asking me if Mr. Moulton was at home, and said that he must see the boy if it was only for five minutes, to enable him to face his congregation.

Q. Who did he mean by the boy—your husband? A. My husband.

Mr. Beach—To enable him to do what? A. To enable him to face his congregation once more.

Mr. Evarts—Well, that he said, and did he wait for Mr. Moulton? A. He did on one or two occasions.

Q. Well, I mean on this occasion; or, was Mr. Moulton in? A. Mr. Moulton was not in.



Q. Did he go off or did he wait? A. I think at this particular interview he waited.

Q. When he said he wanted to see the boy for five minutes, he did wait? A. I think he did.

Q. And saw him. Now, do you know when that was? A. No, Sir; I don't remember.

Q. Nor what part of the year it was? A. I don't remember.

Q. Nor what year? A. No, Sir.

Q. Have you any recollection in reference to what occasion or occurrence it was that he had this desire, thus expressed? A. I don't remember what was the occasion of his depression at that time.

#### MRS. MOULTON'S SYMPATHY WITH MR. BEECHER'S WOE.

Q. What was your habit, Mrs. Moulton, in these frequent visits of Mr. Moulton—

Mr. Beach—Who?

Mr. Evarts—Of Mr. Beecher to your house, when Mr. Moulton was there, and in your husband's presence; what was your habit as to saluting Mr. Beecher? A. I always saluted Mr. Beecher in a friendly way.

Q. Did you usually salute him with a kiss? A. No, Sir.

Q. Did you never salute him with a kiss? A. I never remember to have kissed Mr. Beecher but with one exception. On the morning when he told me that he was about to commit suicide, while he was sitting in the chair with the tears streaming down his face, I was standing behind him and leaned over and kissed him on his forehead, the only time that I ever kissed him.

Q. You remember that occasion? A. I do, Sir.

Q. When you did kiss him on the forehead? A. Yes, Sir.

Q. Putting your arm around him? A. No, Sir.

Mr. Fullerton—No; she did not say that.

Mr. Evarts—Well?

The Witness—I put my hand on his shoulder.

Mr. Evarts—One hand? A. My hand on his shoulder. He was sitting in the chair, and the tears streaming down his face, when he had spoken to me of his great suffering and of my—

Q. Well, the occasion that you have given?

Mr. Fullerton—Well?

Mr. Evarts—The occasion she has given.

Mr. Fullerton—Yes.

Mr. Evarts—Now, I don't ask her to repeat it.

Judge Neilson—There is no occasion to repeat it.

Mr. Fullerton—Well, I agree to that.

Mr. Evarts—Now, do you remember saying to him at the time when you thus kissed him on the forehead, whenever that may have been, that if there ever was a good man you believed he was one? A. I said that I had believed he was a good man; I had believed in him more thoroughly than in any other man, and that having known what I had of him, it destroyed my faith in human nature.

Q. Now, did you or not, at the time you kissed him on the forehead, whenever that was—did you say to him that if there ever was a good man you believed he was one? A. I think I might—I said to him that I had believed that he was a good

man, and I at that time thought there was still a great deal of good in Mr. Beecher.

Q. Have you altered your mind on that particular? A. I haven't any faith in Mr. Beecher.

Q. When did you lose it? A. My faith as a moral teacher in Mr. Beecher was destroyed when I knew what I did of his life.

Q. But this remnant that you had at that time—when did you lose that remnant, that there was a good deal of good in him? A. In the way he has—the course he has pursued for the last year.

Q. Toward your husband? A. Yes.

Q. Now, I ask you, madam, again, if, when you put your hand upon him and kissed him upon the forehead, you did not *then* say to him that if there ever was a good man you believed he was one, then? A. I think I said to Mr. Beecher I believed that there was a good deal of good in him still.

Q. You think that is what you said? A. I think that is what I said.

Q. And do you remember that you did not say, "If there ever was a good man I believe you are one?" A. I don't remember that I said it in that way; I think I do remember of saying that I believed there was a good deal of good in him still.

Q. And you think that was said on the occasion when you thus kissed him on the forehead? A. I think so; yes.

Q. I think you say that you never kissed Mr. Beecher in the presence of your husband, during his visits? A. No, Sir; I was not in the habit of kissing Mr. Beecher.

Q. Well, I want your recollection distinctly, if you have any on that subject. Do you mean—? A. I recollect that I did not kiss him.

Q. Do you mean to say positively, Mrs. Moulton, that during the periods of these visits of Mr. Beecher, when he called to see your husband, and did see your husband, that then in the presence of the two you did not kiss Mr. Beecher? A. I did not.

Q. Never? A. Never.

Q. And you are very distinct in that recollection, are you? A. Yes, Sir.

Q. Do you remember occasions of his visits, and, in the presence of your husband, putting your hands upon his shoulder or his neck and appealing to your husband to take care of this good man? A. Yes, I remember one occasion particularly.

Q. One; you remember that? A. Yes, Sir.

Q. When was that? A. It was on Friday night, just before—

Q. What Friday night? A. I remember it as a Friday night, because Mr. Beecher was on his way then to his Plymouth—to his prayer meeting.

Q. Well, you remember it as a Friday night? A. Yes, Sir.

Q. Can you give us the year and part of the year? A. No, Sir.

Q. You cannot say at all at what stage of things that occurred? A. No, Sir.

Q. Do you remember in what room it was? A. Yes, Sir; it was in our front room; second story front room.

Q. And was that the usual place of your meeting, that is, of Mr. Beecher meeting your husband? A. There was not any usual place; they met in every room in the house.

Q. Well, that was a common place, as common as any other, wasn't it? A. Yes, Sir.

#### WHAT MRS. MOULTON SAID TO MR. HALLIDAY.

Q. Do you remember, Mrs. Moulton, seeing Mr. Halliday on some occasion? A. Yes, Sir.

Q. And having a conversation with him in relation to this matter of Mr. Beecher's? A. No, Sir; I don't remember any conversation I have had with Mr. Halliday bearing on this case.

Q. Do you remember that, after the Woodhull publication, Mr. Halliday came to see you? A. Yes, Sir.

Q. On the subject of that publication? A. Yes, Sir.

Q. Do you remember answering the bell as he rang, and introducing him into the house? A. I think I do; yes, Sir.

Q. You remember that? A. Yes, Sir.

Q. Now, do you remember his saying to you, "Mrs. Moulton, what does this Woodhull business mean? How is it that your name is connected with it?" A. I remember that he referred to the Woodhull story.

Q. Did you answer to that, "I don't know what right Mrs. Woodhull had to use my name; I had nothing to do with it?" A. I think I might have made that reply.

Q. And in further conversation between him and you on that subject did you say to Mr. Halliday, "Mr. Halliday, Mr. Beecher is my pastor, and has been from my childhood, and I believe in him, and they can say nothing that will lessen my confidence in him or my affection for him one particle?" A. Well, I don't remember that conversation; I don't remember that I said that: I remember distinctly that I did not say to Mr. Halliday that I believed Mrs. Woodhull's charges against Mr. Beecher.

Q. That you did not say you believed them? A. No.

Q. Don't you remember distinctly that you said that you did not believe them, and that there was not a particle of truth in them? A. I don't remember that; no, Sir.

Q. Well, now, do you or not remember that you said to Mr. Halliday the words that I now repeat, or words to this effect: "Mr. Halliday, Mr. Beecher is my pastor, and has been from my childhood, and I believe in him, and they can say nothing that will lessen my confidence in him or my affection for him one particle?" A. I don't remember the last part of that, Sir; the first part I remember.

Q. The first part you remember? A. I remember that I said Mr. Beecher had been my pastor since I was 16 years old. That I had told to every one, because that was the truth.

Q. Didn't Mr. Halliday know that? A. I don't know how he should have known it. It was Mr. Halliday's first visit to the house. As nearly as I can remember it was his first visit.

Q. Not his first connection with the Church, though? A. No, Sir; but he didn't know me personally.

Q. Do you think your conversation with Mr. Halliday on this subject ended with telling him that you had been a parishioner 16 years, or whatever it was—"from my childhood?" A. As

nearly as I can remember that was all that was said. I remember distinctly trying to avoid discussing it with Mr. Halliday.

Q. Yes; but I am not asking you what you avoided, but what you said? A. I don't remember anything but the first part of your question.

Q. Do you mean to say that you do distinctly remember the first part? A. I remember distinctly telling Mr. Halliday that Mr. Beecher had been my pastor since I was 16 years old.

Q. And friend, too? A. I don't remember that, because he had not been my personal friend until this case came up.

Q. Well, it is not "friend" here; it is only "pastor." You do remember, then, saying to him that he had been your pastor from your childhood? A. Yes, Sir.

Q. Now, what else do you remember saying to him? A. As nearly as I can remember, I said to Mr. Halliday that I did not care to discuss the case.

Q. Do you remember that you did say that? A. As nearly as I can remember that was what I said.

Q. Well, do you remember that you did say anything of that kind? A. I do not remember positively, but I think I said that to Mr. Halliday.

Q. Now, in regard to the last part: "And they can say nothing that will lessen my confidence in him, or my affection for him, one particle"—do you remember distinctly that you did not say anything of that kind? A. I do not think I could possibly have said that, because my faith had been destroyed in him at that time.

Q. That is the reason you have for thinking that you did not say it? A. I don't think I said it; no, Sir. I don't remember to have said it.

Q. Do you remember that you did not say anything of that kind? A. I say that I don't remember having said it.

Q. That is all that you can say, is it? A. Yes, Sir.

#### MRS. MOULTON'S HABIT AS TO CHURCH-GOING.

Q. Now, Mrs. Moulton, up to what time did you retain your sittings, or pew, if it was an entire pew, in Mr. Beecher's Church? A. I don't remember the year when we last had a pew there. I had sittings with Mr. George Robinson; the last time that we had sittings there was with him.

Q. Do you mean sittings that you hired, or that you occupied only a part of his pew, as a friend or relative? A. We occupied a part of his pew as his friend.

Q. Not as hiring it from the Church? A. No, Sir. I have never hired any portion of Mr. Robinson's pew.

Q. Now, up to what time did you frequent that church and occupy this seat, or any other seat there? A. Do you mean when I last attended the church?

Q. Yes, when you last— A. I think the last time that I was in Mr. Beecher's church was in last June.

Q. Up to that time had you continued to frequent that church? A. I had attended there occasionally. I had not been a regular member of the church—attendant of the church.

Q. Had you attended church anywhere else? A. No, Sir.

Q. So that whenever you went to church, up to June last, you went to Mr. Beecher's church? A. Yes, Sir.

Q. You say that you did not receive the communion after



some date. When did you last receive the communion there? A. I have not taken communion since 1871. Previous to that I don't remember the date.

Q. Did you during the year 1871 take the communion there? A. No, Sir.

Q. Now, Madam, anterior to 1871, when did you last receive the communion there? A. I cannot tell you the date.

Q. Can you give the year? A. Well, I presume—of course I suppose I took communion in the church the year previous.

Q. You suppose so; have you any recollection? A. I have not any recollection as to the time.

Q. Nor the year? A. I think I last took communion in 1870.

Q. Might it not have been in 1869? A. I never allowed a year to pass without going to the communion.

Q. Was it your habit to partake of communion there as often as once a year? A. Yes, Sir, oftener.

Q. About how often? A. I cannot tell you how often.

Q. But not every time it was administered? A. No, Sir.

#### THE INTERVIEWS REHEARSED.

Q. Now, Mrs. Moulton, I think you say that the first time you knew of Mr. Beecher coming to your house was the 2d of January, 1871? A. I don't remember that I said he was there on that day. I don't remember the day; I think it was probably some time during that week.

Q. Well, you returned from the country on the 2d? A. I did; yes, Sir.

Q. He had never been in your house before, I think? A. Not in that house, to my knowledge.

Q. Now, when did you move into this house in Remsen-st.? A. May, 1871.

Q. And where was this house to which he came? A. Clinton-st.

Q. Thus early in January, in Clinton-st? A. It was in Clinton-st.

Q. What number? A. I forget the number; between Livingston and Schermerhorn.

Q. Now, did you ever see him there at that house again. A. What did you say, Sir?

Q. At this house in Clinton-st., did you ever see him again after this call of his the first week in January? A. Oh, yes, Sir; I saw him there.

Q. Before you went South? A. Yes, Sir.

Q. How many times? A. I cannot remember.

Q. Cannot you give us any memory at all about it? A. He came very frequently, quite frequently, to see Mr. Moulton while he was sick.

Q. While he was sick? A. Yes; sometimes twice a day.

Q. Was your husband very sick? A. Very sick indeed; yes, Sir.

Q. Did Mr. Beecher come by your desire? A. No, Sir.

Q. Or your husband's desire? A. No, Sir.

Q. Not at all; not during that whole period, did you say? A. What do you say, Sir?

Q. Not during that whole period? A. Not on my invitation; no, Sir.

Q. Do you remember during this period of his visit to your

husband, saying to Mr. Beecher: "Well, Mr. Beecher, when are you coming to see me?" A. Yes, Sir.

Q. You treated these visits as visits to your husband, in that inquiry? A. Yes, Sir.

Q. Did you frequently say to him: "Mr. Beecher, when are you coming to see me?" A. I don't remember that I said so frequently. I remember having said that to Mr. Beecher.

Q. Do you remember having said it several times? A. I possibly might have said it several times.

Q. Didn't you regard that as an invitation to call upon you? A. No; a special invitation.

Q. Wasn't it a suggestion that he ought to make calls upon you and not confine them to your husband? A. Yes; it might have been a suggestion.

Q. Very well; didn't you intend it in the way that it was expressed? A. I suppose I did, Sir.

Q. Did Mr. Beecher ever make any calls upon you as separate from these calls that he made at the house in reference to Mr. Moulton? A. I remember of only one instance when he said that he came to see me; it was on the Monday which I have stated.

Q. The Monday that you have given a — A. Then he said to Mr. Moulton distinctly that he did not come to see him, but came to see me.

Q. Mr. Moulton was there? A. Yes, Sir.

Q. Now, when was this occasion? A. On the 2d of June, 1873.

Q. And what time of day was this? A. In the morning.

Q. And where was your husband when Mr. Beecher accosted you and him? A. We were in the front room in the second story.

Q. Together? A. Yes, Sir.

Q. And on entering, did he say this that you have mentioned? A. After having wished us good morning he said it.

Q. How did he express himself in saying that—whom did he address? A. He said: "Well, Frank, I did not come to see you this morning; I came to see your wife."

Q. What did your husband say to that? A. I don't remember his answer.

Q. Did you and Mr. Beecher then leave the room and go to some other room? A. No, Sir.

Q. Did your husband leave and leave you and Mr. Beecher together? A. Yes, Sir.

Q. And your interview was in this room then? A. Yes, Sir.

Q. Continued. Now, that was the occasion in which Mr. Beecher was exhibiting and expressing great grief and depression, was it not? A. Yes, Sir.

Q. You have given the details of that. Now, Mrs. Moulton, in reference to what suggestion of any kind made by you to Mr. Beecher during this interview, were any parts of what Mr. Beecher said answered by him? A. I don't understand your question.

Mr. Beach—Nor I either.

Q. You have given a considerable statement of what Mr. Beecher said to you. Were you saying nothing to him during the progress of that statement by him? A. I said a great deal to him.

Q. During the progress of the statement? A. Yes.

Q. Now, won't you be so good as to give us how that statement went on, who spoke first and what was said, and then what by way of answer, and so on? A. Mr. Beecher spoke first. He said that he had had a sleepless night, that he was very much depressed, that he was utterly without hope, and he felt that he must have the sympathy or consolation of some friend, and as I was the only person who knew the truth in this case he came to me.

Q. Very well. What did you say to that—if he stopped there? A. As nearly as I can remember. I expressed my sympathy for him.

Q. How did you express that sympathy, and in what language? A. I said: "Mr. Beecher, I am very sorry for you in this great trouble, and there is only one way out for you, and that is by a confession and telling the truth. You cannot continue in this life of deception and hypocrisy. The truth will come out sooner or later."

#### MR. BEECHER REFUSES TO CONFESS BEFORE THE CHURCH.

Q. Well, did you stop then? A. Perhaps I did; I don't remember anything else just then that I said.

Q. Now, if you stopped, then what did he say? A. He said he could not confess it because his work would be at an end; that if he could not continue in his position as a moral and spiritual teacher there was nothing left for him to do; for the sake of his children—he would be a disgrace to them if he were to confess this crime; that he would have no home and that his people would not forgive him,

Q. Well, he stopped then; did you say something? A. I said that I thought they would forgive him; that he had done a great deal of good in the world, and that his Church were bound to him like, as one man almost, and I thought they would stand by him. He said: "No; that is a crime that they won't forgive; they won't treat me as generously and as kindly as you have done."

Q. Well, did that conclude that remark, and did you then say something? A. I don't remember that it concluded it; we were talking for a long time, three or four hours; I can't—On his part it was one long account of what he had suffered and how he was unwilling to try to go on and endure it any longer; that he felt on that morning that the truth would come out, and that he could not live to meet it; that he hadn't the strength, either physically or mentally.

Q. Well, do you remember anything further that you said by way of encouragement to him or admonition? A. I remember that I did endeavor to encourage him; I told him I thought it was a very cowardly thing to do.

Q. To do what? To take his life.

Q. Then he had said something about taking his life, had he? A. Yes, Sir.

#### THE POISON MR. BEECHER WAS TO TAKE.

Q. Well, what did he say at this stage of the matter? A. He said that he had made up his mind if Mr. Tilton published his letter of apology to take his life; that he had a

powder on his library table which he should take, and that he would pass quietly away without a struggle; that he had made up his mind that he would not try any longer to live it down.

Q. Did he further describe the powder? A. No further than that it was a powder which would give no pain, but cause almost—well, not instant death, but a very easy death.

Q. Yes, but he did not give any name to it? A. No, Sir.

Q. Did he state in what receptacle he had it on his library table? A. No, Sir.

Q. Or what quantity was there? A. No, Sir.

Q. Did he state whether it was labeled "Poison," or not, on his library table? A. No, Sir.

Q. Did he tell you how long he had had it there? A. No, Sir; I don't remember that he did.

Q. Or where he bought it? A. No, Sir.

Q. Well, how did the interview come to an end? A. He said that it was near his dinner hour, and I invited him to stay to lunch, but he said that mother would expect him home; that he could not stay.

Q. Whom did he mean by "mother?" A. His wife, I presume.

Q. Was that his general mode of referring to his wife? A. Yes, Sir.

Q. Well, did he leave in the same gloomy state that he came? A. Yes, Sir.

Q. Did you understand that he was going away to take that powder then? A. No; because he had said that he should come to see me again.

Q. Yes; did he name the time when he was coming to see you again? A. He said he thought he would come on the next day or the day following.

Q. Yes; to see you and not Mr. Moulton? A. To see me.

Q. Well, where is that note? [Note handed to Mr. Evarts.] Take that, if you please, madam. Was it the next time that Mr. Beecher called, after this gloomy interview, that he gave you that note? A. He sent this note on the Sunday previous.

Q. That was the Sunday previous? A. Yes, Sir; it was on Monday that he came to see me.

Q. Oh! that is the day before he sent you that? A. Yes, Sir.

Q. And did he come to see you the next day after this gloomy Monday? A. I don't remember that he came on the next day.

Q. Or the day after—was it very near? A. I don't remember how soon after.

Q. Well, was it a considerable space of time between? A. I don't remember how soon after he came.

Q. How soon after this gloomy Monday interview do you remember to have seen him? A. I don't remember how soon after.

Q. Well, a month? A. Oh! it was not a month.

Q. A week? A. I think I must have seen him during the next week.

Q. In the course of the week? A. Yes, Sir.

Q. Well, do you mean that week, of which Monday was the beginning? A. Yes, Sir.

Mr. Evarts—If your Honor please, it is the hour of recess.

The Court here took a recess until 2 o'clock.



## THE INTERCOURSE BETWEEN THE MOULTONS AND THE TILTONS.

The Court met again at 2:20. Mrs. Moulton was recalled, and the cross-examination was continued.

Q. Mrs. Moulton, when did you first make the acquaintance of Mr. Theodore Tilton? A. I forget the year.

Q. How far back does your memory run in respect to your acquaintance with him? A. I think it is at least six or seven years since I first knew Mr. Tilton.

Q. Didn't you know him in the earlier years of your married life? A. No, Sir; not until I moved to the Clinton-st. house.

Q. When was that? A. I cannot tell you the year.

Q. How many years did you live in Clinton-st.? A. I think four years.

Q. That would make it, then, about 1866? A. It is barely possible that that was the year, but I don't remember.

Q. Did you become intimately acquainted with him? A. He has been a frequent visitor at our house.

Q. Were you an intimate friend of his, and he of yours? A. Yes, Sir; I consider Mr. Tilton a friend of mine.

Q. And you of him? A. Yes, Sir.

Q. When did you make the acquaintance of Mrs. Tilton? A. I think in 1868 or 1869.

Q. And in what way? A. I forget how I first met her; I remember her coming to see me in the Clinton-st. house.

Q. Was she brought there by her husband? A. I think not, Sir.

Q. Were you intimate and friendly with her? A. I think always friendly, but not intimate.

Q. Had you a regard for her, and affection? A. I don't know that I had any affection for her until after this case came up; then I had a sympathy for her.

Q. Yes, but up to this time, you had no particular feeling of regard or affection for her? A. I had a regard for her, not any affection.

Q. Well, was she in the circle of your family friends and acquaintances that you looked upon with regard or affection? A. She didn't visit me frequently, nor I her; but I regarded her as a friend.

Q. Were you aware of the intimacy between Mr. Tilton and your husband at a period earlier than your own acquaintance with him commenced? A. I knew that they were in school together.

Q. And their continued intimacy as men in Brooklyn? A. Their intimacy was not continued from the time they left school. When we were living in Tompkins-place Mr. Moulton never saw Mr. Tilton, that I remember. It was only when we moved to Clinton-st. that I knew of the intimacy between Mr. Tilton and Mr. Moulton.

Q. Did Mr. Tilton ever form a habit of frequently being at your house at meals? A. Yes, Sir.

Q. And for days at a time, one after another? A. Yes, Sir.

Q. When was that? A. He was a good deal at our house when he was organizing the paper—when he was about to start his paper, *The Golden Age*.

Q. When was that? A. I forget the year.

Q. You mean *The Golden Age*? A. Yes, Sir.

Q. Don't you remember that was the same season of this interview you have been talking about? A. I don't remember; I only remember that he came to our house and arranged for the paper?

Q. Was he then, at that season, in the habit of being in your house at meals a good deal? A. Yes, Sir.

Q. Did he frequently spend the night there? A. Not frequently.

Q. Did he sometimes spend the night there? A. I don't remember that he had ever spent more than one or two nights in our house.

Q. But you do remember he spent one or two nights there? A. I am quite sure that he spent one; I don't remember any more.

Q. And he may have spent more? A. He may have spent one or two more, but I don't remember of but one.

Q. Now, through what period of years, beginning in this season of 1871, when *The Golden Age* was established, in 1870-71—through how long a period did his habit of taking his meals at your house continue? A. Well, Sir, I don't know for how long. During the paper—his arranging the paper, he was at our house quite a good deal, perhaps every day, for two or three weeks.

Q. Was that the only period he was in the habit of taking his meals there days in succession? A. No, Sir; he has taken his meals at our house very frequently for the last four years.

## WHERE THE PLAINTIFF'S COUNSEL TAKE THEIR LUNCHEON.

Q. Now, during this trial, has your house furnished the hospitalities of the gentlemen that are conducting the cause of the plaintiff? A. Yes, Sir.

Q. Every day? A. With one or two exceptions.

Q. That has been their place of meeting and of lunching, has it not? A. They have lunched with us; yes, Sir.

Q. Habitually? A. Yes, Sir.

Q. And have you been present on these occasions? A. Yes, Sir.

Q. At the table? A. Yes, Sir.

Q. With them? A. Yes, Sir.

## MRS. MOULTON MAKES REFLECTIONS ON MR. TILTON.

Q. Do you remember an interview that you had with Mr. Tilton at your house during some of these years; in January, 1873, do you remember having an interview with Mr. Tilton at your house, in which you told him that he was a villain, and would betray your husband as he had Mr. Beecher? A. I think I remember an interview with Mr. Tilton something like that.

Q. Do you remember when that was? A. Yes, Sir; it was last July.

Q. Last July? A. Yes, Sir.

Q. Do you remember, on his making some remark in answer to this statement of yours, that you threatened to send for a policeman and have him put out of the house? A. No, Sir; I

never remember the policeman, nor any reference to any policeman.

Q. What did you further tell him? A. I said if he was unkind to Frank, my husband—if he turned on him in any way, inasmuch as by a look, that he must never come into our house again.

Q. Did you, on the occasion of any interview that you had with Mr. Beecher, say to him this, or words equivalent to it, that "at heart, Theodore Tilton is treacherous, and hates you?" A. I think I might have said to Mr. Beecher that Mr. Tilton hated him; I think he had good reason to.

Mr. Evarts—I didn't ask you that, madam. I ask that that be struck out.

Judge Neilson—Yes; the last clause will be struck out.

Q. Be good enough to confine your answers to my questions. Do you think that you did say to Mr. Beecher: "At heart Theodore Tilton is treacherous and hates you?" A. I remember repeatedly saying to Mr. Beecher that I thought it was impossible for Mr. Tilton to keep this quiet. I might, in that way, have said that I thought he was treacherous.

Q. Treacherous in regard to keeping it quiet? A. Yes, Sir. While he meant to keep it quiet I think he was often forced to an answer which told you the whole truth.

Q. I didn't ask you your opinion—what you told Mr. Beecher? A. That is what I told Mr. Beecher.

Q. What did you tell him? A. I told him that I thought Mr. Tilton was filled with revenge and anger against him, and that often when questions were put to him, he made a reply such as told the whole truth.

Q. You think you put that in, about the questions being put to him? A. I think I did.

Q. Well, now, madam, will you tell me whether you ever told Mr. Beecher, in terms, that Theodore Tilton at heart was treacherous and hated him? A. I don't recollect those exact words, yet I think I might have said so.

Q. Do you remember at what stage or season of this controversy you said that to Mr. Beecher? A. No, Sir; I cannot remember any particular time; there have been so many times when Mr. Tilton has had reason to feel angry.

Q. That I am not asking you about his reasons? A. I cannot tell you the times. It may have been a number of times.

Q. You think you may have said that a number of times to Mr. Beecher? A. I think I may have said it a number of times to Mr. Beecher.

Q. A number of times? A. Yes, Sir; I think so.

Q. Mrs. Moulton, did you first make a profession of religion in Mr. Beecher's Church? A. Yes, Sir.

Q. And in what year? A. I think in 1858.

Q. That was two years before your marriage, about? A. Yes, Sir.

Q. Do you remember your habit of less frequent reception of the communion dating from your marriage? A. The first two years after my marriage I lived in New-York.

Q. And didn't attend the church? A. No, Sir.

Q. And then resumed connection with the congregation? A. Yes, Sir.

Q. In this place of worship? A. Yes, Sir.

Q. Now, do you remember that from that time onward your habit of receiving the communion was infrequent? A. I remember so; yes, Sir.

# MRS. MOULTON NO SYMPATHIZER WITH WOMAN'S RIGHTS.

Q. Had you become connected with the Woman's Suffrage movement? A. Never; no, Sir.

Q. Or anything of that kind? A. No, Sir: never in any way connected with it.

Q. Your husband, you think, was? A. Yes, Sir.

Q. And that you were aware of? A. Yes, Sir.

Q. Was your house a place of meeting for the ladies and gentlemen who were active in that movement? A. Quite a number of them visited our house. I don't know that it was a place of meeting.

Q. Frequently? A. Not very frequently; no, Sir.

Q. And during what period—what year? A. I cannot remember the year.

Q. Was Mrs. Woodhull included in their number? A. I don't remember that Mrs. Woodhull was ever there with any of the Woman's Suffrage Party.

Q. You do not remember? A. No, Sir.

Q. Who do you remember as having been there? A. With Mrs. Woodhull?

Q. No; these Woman Suffrage people. A. Mrs. Stanton, Miss Anthony—I don't remember the names of any of the others.

Q. There were quite a number of others, were there not? A. Well, I don't remember at present the names of any of the others.

Q. Did you used to take part in their meetings or their conversations? A. No, Sir.

Q. Did you avoid it? A. I had not any particular interest in it; I don't know that I avoided it.

# THE INTERVIEW BETWEEN MRS. MOULTON AND MRS. TILTON.

Q. You have said something, Mrs. Moulton, of an interview that you had with Mrs. Tilton? A. Yes, Sir.

Q. When was that, in point of time—what year, and what part of the year? A. I don't remember the year or the time. I remember it was after my interview with Mr. Beecher.

Q. After which interview with Mr. Beecher? A. The first interview, when he confessed to me the truth of the charges made against him.

Q. The first interview? A. Yes, Sir.

Q. It was after the first interview? A. Yes, Sir.

Q. And it was near that, was it not? A. I don't remember how near, or that it was very near to it.

Q. What? A. I don't remember that it was very near.

Q. You do not. Well, then, it was after some other interview that you had with him was it not, if it was not very near? A. I don't remember.

Q. You cannot give us any idea of the time that this interview with Mrs. Tilton took place? A. No, Sir.



Q. You don't know whether it was in 1873 or 1872? A. It must have been early in 1873.

Q. Do you think it was in 1872? A. It might possibly have been in 1871—in the Fall of 1871; but I don't remember positively when it was.

Q. You have no recollection—you cannot fix it at all? A. I cannot; no, Sir.

Q. Does it connect itself with anything that you can give a date to? A. I know it was after my interview with Mr. Beecher, because she asked me from whom I had learned the truth. I said from Mr. Beecher himself.

Q. That is your only mode of fixing the date? A. That is the reason I know it was after my first interview with Mr. Beecher.

Q. And that is the only mode by which you know it was after that? A. That is the best reason I can give you.

Q. But this interview with Mr. Beecher was in the first week of January, 1871, was it not? A. No, Sir; I didn't say that my first interview with him was in the first week of January. I saw him—he was coming to the house frequently before he spoke to me.

Q. Well, when was this first interview? A. I cannot remember whether it was in the Spring of 1871—

Q. Or— A. Or later; I don't remember the time—the season of the year; I only remember it was in 1871.

Q. And it might have been either Spring or Fall, so far as you know? A. Yes, Sir.

Q. And you have at present in your memory no circumstance that enables you to know whether it was Spring or Fall? A. No, Sir.

Q. Either in the weather, or anything that remains in your mind of what occurred, or anything else? A. No, Sir.

Q. And you have no way of telling me how soon after that you saw Mrs. Tilton? A. No, Sir.

Q. Did not Mr. Beecher at all times—at the times of which you have spoken of talking with him, always show great solicitude that Mrs. Tilton should be properly considered and treated by everybody? A. Yes, Sir; he always expressed the greatest kindness and consideration for Elizabeth.

Q. For her, and always desired, did he not, that you would treat her well? A. Yes, Sir.

Q. And visit her? A. Yes, Sir.

Q. And console her? A. Yes, Sir.

Q. Now, you went to see her? A. Yes, Sir.

Q. Where did you see her? A. I saw her in her house in Livingston-st.

Q. In which room? A. I have seen her in two or three rooms of the house. I don't remember where I first saw her.

Q. This visit that I speak of? A. I don't remember which room.

Q. You don't remember which room? A. No, Sir.

Q. Do you remember how long you saw her? A. No, Sir; I don't remember how long.

Q. Do you remember at any time visiting Mrs. Tilton when you supposed that there might be some public controversy or

accusation that might bring this matter into contest? A. Yes, Sir.

Q. And asking her if there would be a contest between her husband and Mr. Beecher, what her views would be? A. Yes, Sir.

Q. You do? A. Yes, Sir.

Q. Is that either of the occasions to which you have referred in your direct examination? A. I don't remember; I remember the conversation to which you refer, and the occasion of it. I think it was the time Mr. Tilton went down to the Church.

Q. Went down to the Church? A. I don't know when.

Q. Well, we have that date. You think it was after that, was it? A. I think it was at that time.

Q. Was it after that occurrence, or before? A. I don't remember whether it was after, or not.

Q. Now, what led you to make that visit, and what was your object in making it? A. I wanted to know from Elizabeth what course she meant to adopt in case she was called before the Church.

Q. You mean this last year? A. No, Sir.

Q. You don't mean this last year's inquiries? A. No, Sir.

Q. You mean when the talk was about investigating Mr. Tilton? A. When he was dropped from the Church; I think that was the time; I cannot say positively. As near as I remember that was the time.

Q. Did you go of your own accord, or were you desired to go? A. I went of my own accord.

Q. You didn't go on your husband's desire, or in any interest, or at his request? A. No, Sir.

Q. And your object was to learn what her view would be if that contest came on? A. Yes, Sir; what position she proposed to take.

#### MRS. TILTON'S UNFALTERING DEVOTION TO MR. BEECHER AGAIN DESCRIBED.

Q. Do you remember asking her whether she should support her husband in a charge against Mr. Beecher, or whether she should not, and her answer being made to you that if there ever came a controversy she should speak the truth? A. No, Sir; I never remember that.

Q. You don't remember that? A. No, Sir.

Q. Now, did you urge her in that interview as to what she should do, one way or the other? A. I cannot remember that I urged her; I can tell what I said to her.

Q. Did you speak to her on the question of which side she should take? A. Yes, Sir.

Q. And did you express an opinion as to which side she ought to take? A. I don't remember that I did.

Q. Were you at that interview very much excited and distressed? A. I think I was; yes, Sir.

Q. Did you show in your manner great distress? A. Yes, Sir; I think I did.

Q. And weep? A. Very likely, Sir.

Q. Now, did you in that interview express to her great distress lest Mr. Beecher should be betrayed by Mr. Tilton and your husband? A. Not that he would be betrayed by them, but that the truth would be known—made public.

Q. And by them? A. Oh! yes, by them.

Q. By them. Now, did you in that interview, in expressing this opinion of what Mr. Tilton and Mr. Moulton would do, beg her to stand by Mr. Beecher? A. So long as she could without sacrificing herself and the truth.

Q. Did you beg her to stand by Mr. Beecher? A. So long as she could without sacrificing the truth.

Q. You did beg her? A. Very likely, Sir—very likely.

Q. And did she not then tell you that, whenever the inquiry came, she should tell the truth? A. No, Sir.

Q. Did she tell you that she should not tell the truth? A. She told me distinctly that she should sacrifice her husband and deny everything for Mr. Beecher; that she believed under the circumstances that she would be justified in telling a lie. [Applause.]

Judge Neilson—The audience will please keep quiet.

Q. Now, madam, are you quite sure that in addition to saying she would sacrifice her husband and defend Mr. Beecher (is that the phrase?)—A. Yes, Sir.

Mr. Evarts [continuing].—That she added that she would tell a lie? A. Yes, Sir, I am; I cannot say as to the words that she used the word "lie," but she said that she would deny everything.

Q. But did she add that she should lie about it? A. If she didn't use the word "lie" she said falsehood.

Q. Did she say that she would tell a falsehood? A. Yes, Sir.

Q. One or the other—did she flatly tell you that she would tell a lie or a falsehood? A. Yes, Sir.

Q. Did you go to your house satisfied then that your errand had succeeded? A. I have never felt that any errand of mine has ever been successful.

Q. In this business? A. No, Sir.

[At this period there was some commotion in Court, and loud conversation.]

Judge Neilson—Gentlemen, you will please, unless your business requires you to confer, please omit it; and either listen, or if you have anything to do in the way of reporting, attend to that.

#### THE MOULTONS' PORTRAIT OF MR. BEECHER.

Q. Do you remember about this portrait of Mr. Beecher being brought to your house? A. I remember it was brought there.

Q. Do you remember when that was? A. I don't remember the year—whether we had it in Clinton-st. or not; I don't remember.

Q. You have no recollection? A. Not as to the year; no, Sir.

Q. But still you can recollect as to its being in your house a number of years? A. We have lived in our house for three or four years; I think it has been in our house since we have lived in Remsen-st.; I am quite sure of that.

Q. Ever since? A. I think so.

Q. Now, where was it hung? A. In the front parlor.

Q. And at one time was it removed from that place? A. It was removed—yes, Sir.

Q. When? A. This last Autumn.

Q. And another portrait put in the room? A. Yes, Sir.

Q. And where was Mr. Beecher's portrait put? A. Mr. Beecher's portrait still stands on the mantel-piece in our front room on the second story.

Q. I beg pardon, I didn't hear your answer. A. It stands on the mantel-piece in the front room in our second story.

Q. Your own room? A. It is a sitting-room.

Q. Not a bedroom? A. At present it is not used as a bedroom.

Q. Was it a bedroom when the portrait was put there? A. No, Sir; for the reason that we have not occupied that room often.

Q. But it is a sitting-room? A. Yes, Sir.

Q. It is the room up-stairs, where interviews took place? A. Yes, Sir.

Q. And there it has remained? A. Yes, Sir.

Q. Now, that was this last year? A. This last Autumn.

Q. And, of course, after Mr. Beecher's published statement? A. Yes, Sir.

Q. Do you remember, while Mr. Beecher's portrait was in the parlor, that Mr. Moulton had gas lights arranged specially to display it? A. Not specially to show his picture; we have several of Mr. Paige's pictures.

Q. Yes? A. He had them arranged to show the different pictures in the room.

Q. Including this of Mr. Beecher? A. Including that; yes, Sir.

#### MRS. MOULTON'S REMARKS ABOUT THE PORTRAIT.

Q. Do you know Mr. Andrew McLean? A. Of *The Eagle*?

Mr. Fullerton—No.

Mr. Shearman—Yes, of *The Eagle*.

The Witness—I have met him; yes, Sir.

Q. You know Mr. Andrew McLean? A. Yes, Sir.

Q. He is a Brooklyn gentleman? A. Yes, Sir.

Q. Do you remember a conversation with him about Mr. Beecher, when looking at that portrait, showing it? A. I don't understand your question.

Q. Do you remember a conversation with that gentleman, while you were exhibiting to him Mr. Beecher's portrait? A. I never remember exhibiting Mr. Beecher's portrait to him particularly.

Q. Do you remember, in November or December, 1872, in your parlors, expressing to Mr. Andrew McLean (in view of, and in reference to the portrait of Mr. Beecher) your own confidence and admiration for him? A. I think I expressed my admiration for Mr. Beecher; I don't remember now the exact conversation; but, I think I expressed, perhaps, my admiration for Mr. Beecher, but certainly not my confidence in him.

Q. You are quite sure you did not express your confidence in him? A. I am quite sure.

Q. And nothing equivalent? A. I don't know exactly the conversation; I know I have always spoken to every one of my admiration of Mr. Beecher.



Q. Did you say to Mr. McLean that he was a "pure man?"

A. I don't remember saying that?

Q. And, a "good man?" A. I don't remember having said that.

Q. And "entirely innocent of the Woodhull charges?" A. No, Sir. I never said that to anybody.

Q. Nothing of the kind? A. No, Sir; never to anybody.

Q. Do you now remember having had a conversation with Mr. McLean? A. I remember Mr. McLean waiting in our parlor for Mr. Moulton, and I remember his calling attention to Mr. Beecher's portrait, and I think it quite likely that I expressed my admiration for Mr. Beecher, which I have never failed to do.

Q. Never what? A. I have always expressed my admiration of him.

Q. Now, are you quite sure that you did not say to Mr. McLean, as a part of your admiration, that he was a "pure man"? A. I certainly have never said that to anybody.

Q. Can you give us the language you did use to Mr. McLean, in expressing your admiration for Mr. Beecher? A. No, Sir; I cannot.

Q. Do you remember the occasion of Miss Emily Faithfull, who, I think, was an English philanthropist, being here? A. Yes, Sir.

Q. And, your giving her a reception at your house? A. I don't think we gave her a reception; she spent six weeks with us; but, during that time, I don't remember that we ever had any reception particularly.

Q. Did you not have a social reception, a levee, or a meeting of invited guests, on the occasion of Miss Faithfull's being at your house? A. We invited a number of friends to meet her, but never any reception, or levee, or large entertainment.

Q. Not a large entertainment? A. Not that I remember.

Q. Well, did you take part in any public reception elsewhere than at your house for Miss Faithfull? A. I went with Miss Faithfull to Steinway Hall once, when she delivered a lecture there; and I attended a reception given to Miss Faithfull by Mrs. Bullard of Thirty-ninth street.

Q. Mrs. Bullard of Thirty-ninth street in New-York? A. Yes, Sir.

Q. Do you remember calling on Mr. Beecher and inviting him to preside at that? A. Preside at the reception at Mrs. Bullard's?

Q. Yes. A. No, Sir; I don't remember that I invited him.

Q. Or at the Steinway Hall meeting? A. I, perhaps, asked him to go; I don't remember that I asked him to preside.

Q. Do you remember when that was? A. Well, I think it must have been in 1863.

Q. 1873, you mean? A. 1873.

Q. Now, don't you remember that you called especially at Mr. Beecher's house to give that invitation, and that you saw him, and gave it? A. I remember distinctly calling at Mr. Beecher's house and seeing him.

Q. [Interrupting]—And seeing Mr. Beecher and inviting him? A. But, I don't remember that I called to see him on that business.

Q. Do you remember now, Mrs. Moulton, at any interview with Mr. Beecher saying, to him this, or to this effect: "I am afraid that my husband and Mr. Tilton have overreached you?" A. I don't remember using those words.

Q. You don't remember anything of that kind? A. Not these words; nor I don't remember of conveying any such message as that to Mr. Beecher. I remember often expressing great fear that the truth would come out in spite of my husband's endeavor to keep it quiet.

Q. And Mr. Tilton's? A. Yes; and Mr. Tilton's.

Q. You remember that, but you do not remember giving it the form or effect of an expression that your husband and Mr. Tilton had overreached him? A. I do not remember that—no, Sir.

Q. Do you remember asking Mr. Beecher if he was not fearful that your husband and Mr. Tilton had overreached him? A. No, Sir.

Q. Nothing of that kind? A. I do not remember that expression at all—no, Sir.

Q. Do you remember, Mrs. Moulton, having said to any person that your husband and Mr. Tilton had overreached the old man, meaning Mr. Beecher? A. I do not remember, at all, that sentence "overreaching Mr. Beecher," or "The old man."

Q. Well, do you put it upon the word "overreaching?" You know what that means. Was it any equivalent word? A. No; I have always had a very great fear that my husband would never be able to keep it quiet, while he has tried very hard to do it; he has tried to serve both Mr. Beecher and Mr. Tilton faithfully, yet I have always feared that Mr. Tilton, when he has been forced to answer, that he would tell the whole story; that has been my only fear.

Q. You think, so far as you observed, that the getting out of the matter came from Mr. Tilton? A. I think it was the force of circumstances.

Q. Operating upon him—don't you? A. Perhaps so.

#### THE FREQUENCY OF MR. BEECHER'S CALLS

Q. Now, Mrs. Moulton, you have spoken of Mr. Beecher coming to your house almost every day, or twice a day, &c. At what period of time, and through how long a period of time do you speak of any such frequency of visits? A. During the last four years, up to last July.

Q. Do you mean the whole four years he came there every day? A. I do not say so—no, Sir.

Q. Through the whole four years there were times when he came every day? A. Yes, Sir; when he had been in Brooklyn.

Q. Now, what periods of time were those at which his visits were thus frequent, and how long did any such frequency continue at any one time? A. I cannot state how long, nor at the particular times in which he came so frequently.

Q. Well, was one of those times in the Winter of 1871, before you went South? A. We went South in the Spring of 1871.

Q. Well, in the Winter of 1871, before you went South, was there a period of those frequent visits or not? A. Yes, he

visited our house very frequently at that time, and during Mr. Moulton's illness he was at the house twice a day.

Q. That was the same season? A. That was in 1871.

Q. That was before you went South? A. Yes, Sir.

Q. Now, when again did there come up any frequency of his visits? A. The time of the Woodhull publication.

Q. You mean of the card? A. I mean of the publication in her paper.

Q. The final paper? A. Yes, Sir.

Q. That was the end of 1872? A. I do not know, Sir, what year.

Q. You cannot remember any period of frequent visits from him between those two times? A. Yes, I remember he has been at our house very frequently for the last four years; I cannot tell the dates, the time of year, or the circumstances connected with it.

Q. You certainly do not mean to be understood that Mr. Beecher has been at your house every day during the last four years? A. No, Sir.

Q. Or parts of the days during the last four years? A. I do not know how many days in the year; I know that there have been a great many days when he has been there twice a day.

Q. Do you not know that there were certain periods at which he made frequent visits? A. Yes, Sir.

Q. And don't you know that the rest of the time he did not make frequent visits? A. I know when he had been in Brooklyn he visited our house frequently.

Q. Well, but every day visits? A. Of course there have been times in the last four years, when he has visited our house more frequently than at others, but I can not remember the date or time.

Q. Do you not know that there were but few occasions in which the frequency of those visits occurred, and that they all had something to do with some question of publicity, or publication, or expected publication connected with this affair? A. No; I know Mr. Beecher has come very often to see Frank, as we said, to get a little hope and strength and courage from him.

Q. That may be. A. Not with reference to any publication.

Q. Did he come through a series of weeks, every day, for that purpose? A. I do not know that he did.

Q. Can't you distinguish in your mind at all that there were occasions of frequent visits, and then there was an interval when only ordinary visits were made? A. I do not remember of any time when the visits were ordinary.

Q. You do not remember any ordinary visits. A. Yes; for the last four years he has been so much at our house that I can hardly describe between the two.

Q. Now, do you remember there being visits there of ordinary calls in which you participated, and in which there was no connection with this business? A. I do not know that I remember hardly an instance when I was present.

Q. You do not remember any. Was Mr. Beecher, during this time, frequently there as a guest, by invitation at a meal, a dinner, or a tea? A. I remember on two or three occasions he was invited. On one occasion Mr. Tilton was to make a political speech in Brooklyn during the Greeley campaign, and Mr. Beecher was invited with others to take supper at our house.

Q. Is that the only occasion that you remember? A. No, Sir—I have a recollection of perhaps one or two other occasions; but I don't remember who were present, or who were invited—

Q. Do you mean to say that during the whole four years you think he was not invited to your house more than once or twice? A. Yes, but I do not remember.

Q. You do not remember? A. I don't remember how many times Mr. Moulton may have invited him.

Q. Well, how many times he came there to meals. A. I remember his taking breakfast with us one morning; I remember his taking tea with us once, or two or three times.

Q. But to your best recollection the occasions were very few and infrequent? A. I don't remember any occasion when he did so.

#### THE INTERVIEW AGAIN MINUTELY DETAINED.

Q. Now, you have mentioned one occasion in which Mr. Beecher was waiting in the parlor and took you by the hand, &c. Now, when was that occasion? A. It was either late in the Spring of 1871 or in the Fall; I don't remember whether it was Spring or Fall.

Q. That was not the first time, was it, that you saw him? A. No, Sir; it was not the first. I had frequently seen him at our house before.

Q. In reference to having any conversation with him—was this the first conversation you had with him? A. In reference to this case?

Q. This was the first one? A. Yes, Sir.

Q. And you cannot say whether this was in the Spring or Fall of 1871? A. No, Sir.

Q. And you are quite sure that up to that time you had no conversation with him? A. None whatever; no, Sir.

Q. Now, as I understand you, he did not then come to see you? A. No, Sir; he did not come to see me.

Q. He did not come to see you; and how came you to have any interview with him on that occasion? A. I presume I went into the parlor to speak with him, as I often did, when he was waiting for Mr. Moulton.

Q. And what did he say? A. He had been walking up and down the floor and seemed very much excited, and after a few moments' conversation he took my hand and asked me if I knew anything of this sorrow of his life.

Q. Of this sorrow of his life? A. Yes, Sir.

Q. Well, what did you reply? A. I said I did.

Q. What, then, did he say? A. He said: "Then Frank has told you the facts, has he, in the case?" I said: "He has."

Q. And then you parted? A. I don't remember of anything more; I expressed great sorrow at having known what I had concerning Mr. Beecher; I told him I had been a member of his church for so many years and believed in him.

Q. At this interview? A. I expressed great sympathy for him; some feeling of regret at my own condition of mind in having known what I did concerning him.

Q. At this interview? A. Yes, I think so.

Q. Are you certain you said anything more then? A. I know I expressed sympathy for him on that occasion—yes, Sir.



Q. And then you parted? A. Yes, Sir.

Q. You say that you had an interview with Mr. Beecher about the first of June, 1871? A. I don't remember that I had.

Q. That has reference to some date; we fix it?

The Witness—Was it 1873?

Mr. Evarts—No; that is another matter.

Q. Well, was the interview that you have just now been speaking about that about the first of June, 1871? A. I do not know at what time in 1871.

Q. Well, at all events, between this interview until Mr. Beecher took your hand, etc., whenever that occurred, was the first interview that you remember when anything "passed between you and him concerning this business—that of June 2, 1873? A. I don't think I understand your question.

Q. You have given us an interview that took place some time in 1871? A. Yes.

Q. Is the next interview with Mr. Beecher in which anything passed between you and him on the subject, the interview that took place in June, 1873? A. I had a number of interviews between that time with Mr. Beecher with reference to this case.

Q. Well, the next that you have spoken of in your direct examination, was that the one of June 2, 1873, that lasted three or four hours, you say? A. That is the next of any importance.

Q. The next of any importance—on this occasion, which I think was in the morning, was it not? A. 1873?

Q. Yes. A. Yes, Sir.

Q. Mr. Beecher found you and Mr. Moulton together? A. Yes, Sir.

Q. In this room up-stairs? A. Yes, Sir.

Q. Was that then a bedroom? A. It was.

Q. Used as a bedroom? A. Yes, Sir.

Q. And still it was the place where you had—where Mr. Beecher often had these interviews. Now, what passed between you and Mr. Beecher—and between Mr. Beecher and Mr. Moulton, while your husband was there? A. Oh! most ordinary conversation; I forget what it was; nothing of any importance, however.

Q. The ordinary salutations, and anything in his manner which was peculiar, while Mr. Moulton remained there, I mean? A. Yes, Sir; Mr. Beecher said that he had not slept any all night; that he was very much depressed; that he was utterly worn out.

Q. He said that while Mr. Moulton was there? A. Yes, Sir.

Q. Well, was that all that he said while Mr. Moulton was there? A. No; I asked him if he would lie down on the lounge. I gave him a pillow; covered him up with the Afghan or whatever was lying there, blanket; he laid down on the lounge.

Q. Put a blanket on him? A. I covered him with the ordinary blanket of the lounge. Yes, Sir; Afghan.

Q. The Afghan?—yes. Well, you suggested that to him? A. I did; yes, Sir.

Q. What led you to make that suggestion that he should lie down, and that you should cover him with the Afghan? A. Because he said he was very tired; that he was heart-broken; he was utterly without any hope; that he had not rested any;

that he came around for some comfort, and consolation, and sympathy, &c.

Q. And that he came to see you, and not Mr. Moulton? A. Yes, Sir.

Q. Well, all this was done, then, while Mr. Moulton was there? A. Yes; and he laid down on the lounge while Mr. Moulton was there.

Q. And was covered with the Afghan? A. Yes, Sir.

Q. And then Mr. Moulton went off? A. Yes, Sir.

Q. Now, as he lay there, he talked to you, didn't he? A. Yes.

Q. And where were you seated? A. I was sitting on the chair opposite to him.

Q. Now, won't you tell us what Mr. Beecher said; the language that he used, as you remember it, and go through the whole interview in that form, of what he said and of what you said, if you know what it is? A. Well, he began by saying that he was depressed and discouraged—

Q. Was this after your husband went away?

Mr. Fullerton—No; she commenced the narrative.

Mr. Evarts—I want you to begin after your husband went away.

The Witness—I have so commenced.

Q. Very well; that is all that I have asked you? A. He expressed great sorrow for the misery that he had brought upon himself and Mrs. Tilton, upon everybody connected with the case, but said that he felt that he had thoroughly repented, and that he had been forgiven, and that he was better fitted now to preach than ever before. He expressed to me his love for Elizabeth, and his great remorse and sorrow that she should have ever confessed to her husband that it had brought nothing but—it would bring only ruin in the end to all. After lying on the sofa a little while he got up and walked up and down the room in a very excited manner, with the tears streaming down his cheeks, and said that he thought it was very hard, after a life of usefulness, that he should be brought to this fearful end, and I said that I thought it was—it was very hard, and there was only one way out of it for him; there was only one chance for him left, and that was by confessing it. After walking up and down for some time he sat down in the chair. I stood behind him and put my hand on his shoulder, and I said: "Mr. Beecher, if you will only go down to the church, Frank will go with you; he will stand by you through everything; it does not matter what comes to you, he will always be your friend, and, no matter what comes, I will always be your friend if you will only go down to the Church and confess, because that is the only way out for you; I am convinced of that; you can never cover such a crime as this and continue in the pulpit, except through a confession on your own part. You have been guilty of crime and you have got to take the responsibility upon yourself, and suffer the penalty. And he said: "Well, I never gather much comfort from you; you are always to me like a section of the day of judgment." And I said: "Well, I feel great sympathy for you, but I don't see how you can continue in this sort of life; living a lie; going into your

pulpit and preaching Sunday after Sunday." I said: "I have never heard you preach since I knew the truth that I haven't felt that I was standing by an open grave; I cannot express to you the anguish and the sorrow that it has caused me to know what I have of your life. I believed in you since I was a girl; believed you were the only good man in this world. Now, it has destroyed my faith in human nature. I don't believe in anybody; I don't go to church—all my interest in the Church and in you is gone, and I am sure I cannot respect you unless you manifest to me that you are sincerely repentant by going down to the Church and confessing your crime. It is very hard for Mr. Tilton to be abused by your friends, and to be charged with treating his family ill—his unkindness to his wife while he feels that you are principally the cause of all his trouble. It is very hard for him; it is very hard for all concerned. If you are only amind to take this case into your own hands you can settle it by confession. Your people will stand by you; they believe in you; they will forgive this one crime that you say you have committed and which you have—which you say you have—sincerely repented for, and you believe you have been forgiven, and you feel that you are better able now than ever before to do great good in this world if you can only be allowed to go on to the end of your life without all the particulars of this case being made known; that is all that you ask, and if the facts are to come out, you want to go out of life; that you cannot live; that you cannot endure it any longer; physically and mentally you are worn out; and it is only with the greatest care that you have been able to preach Sunday after Sunday." His whole conversation was one—

WHAT THE CONFESSION SHOULD BE, NOT SUGGESTED.

Q. Well, that is what you said to him, this last ?  
A. Yes.

Q. Is that what you advised him to say to his people ? A. I don't—

Mr. Fullerton—I think she ought to be permitted to finish the narrative.

Mr. Evarts—Well, I will go on with it; I will take care of my own inquiry.

Mr. Fullerton—Well, I will take care of you if you violate any rule.

Mr. Evarts—I do not violate any rule.

Mr. Fullerton—I think the witness ought to go on with the narration until she is through.

Mr. Evarts—I am finding out what she is saying now, before I go any further.

Mr. Beach—Yes, your Honor; but it is necessarily breaking up a continued narrative which the witness is called upon to give, and must necessarily embarrass her in her relation by diverting her.

Mr. Evarts—I don't wish to do so.

Mr. Beach—I don't know what you wish to do, Sir; I know what the effect is, and I know it would embarrass any one when they are asked to give a narrative about a transaction—conver-

sation, which took place and continued for a very long time, to interrupt them with questions that do not look to a continued statement of the conversation.

Judge Neilson—Well, let the witness proceed.

Mr. Evarts—My inquiry, if your Honor please, was whether this last was what she said to Mr. Beecher, and was in the form of what she advised him to say to his people.

The Witness—I don't know that I ever stated to him what the confession should be to the Church. I simply left—I left that to him. He knew what his confession to the Church could be better than I could—how much he was to confess.

Q. I understand your form of expression in this latter part to have been of what you told him he should tell his people. A. This was my conversation with him; I simply said to him that I thought he should make a confession to his people.

Q. Yes—and should tell them these things, did you? A. I don't think I ever said what he should tell them.

Q. Very well; you can go on now. A. Mr. Beecher then spoke to me of coming some time, either the next day—to bring me some mementoes which he wished to give to his friends—something to Mrs. Tilton—asked me always to respect her and care for her, and be kind to her; that she was not a bad woman at heart; that she had sinned through her affections.

Q. Well? A. I only remember that Mr. Beecher was in a very excited condition of mind on that day; that he told me very positively that he should take his life, and I believed him when he said so.

Q. You did believe him? A. I believed him at that time.

Q. Yes, well? A. And I rebuked him and told him of how much I regretted that he had committed this sin, because I had believed in him; how it had destroyed all my faith in human nature; his only reply was that he had repented and he believed that he had been forgiven; still he suffered greatly, fearing it would come to light; that the truth would all be made known; that he suffered first for the sake of the woman who had given her love to him, for the sake of his children; he said that he would—that his children, of course, would despise him; that he could never go back to his house, and then I said: "You could go up to your farm and write"; but he said, "No; if the people won't listen to hear me preach, they certainly won't read anything that I may write; if I cannot continue as a moral and spiritual teacher, why there is nothing left for me to do, and I had better go out of life than remain a burden to my children and my family, and the Church. All my past record will be wiped out." He said he hadn't any fear of death; he rather longed for it as a release from all the trouble, and all the anxiety, and all the anguish of mind, and remorse that he had suffered and was suffering daily; expressed to me his great gratitude for my sympathy; said that our house was the only place where he could act naturally and without reserve; that when he went home he must be cheerful and happy, and wear a smile; that when he went into the pulpit he must be at his best—the least indication of weakness on his part was a confession;



that is the only thing of any importance at the interview that I know.

Q. That is all you remember that you have given us? A. Of any importance.

Q. All that is impressed upon your mind? A. That is all that I can remember at present.

Q. Did he come back and see you again? A. On that day?

Q. No, the day he said he was coming and going to bring some mementoes? A. He never brought me any mementoes, and I don't remember positively that he came on the next day.

Q. Well, did he come anywhere near that time and have a further talk with you on the subject? A. He came soon after; referred to his depression on that day, but said that he felt more hopeful; that he thought that his card in *The Eagle* was only temporary relief; he was living in a fear of—a constant fear and anxiety, not knowing at what time Mr. Tilton might break out with the truth.

Q. Now, Mrs. Moulton, at what time of the day did Mr. Beecher come to your house on the occasion of this long interview? A. To which I have just referred?

Q. Yes. A. He came early in the morning; about—

Q. How early? A. Perhaps nine o'clock; perhaps later.

Q. And at what time did he leave your house? A. About lunch time, I think.

Q. You asked him to stay to lunch, did you not? A. Yes, Sir.

Q. And he said he would be expected at his dinner by— A. Yes, Sir.

Q. Mrs. Beecher. Now, was that about one o'clock? A. I think it was about two o'clock; I don't remember exactly.

Q. Was it your usual lunch time? A. Yes, Sir.

Q. There was no delay of your lunch in consequence of this, you think? A. Not that I remember; no, Sir.

Q. There was none. Now, Mrs. Moulton, you say that Mr. Beecher sent some messages by you to Mrs. Tilton? A. Yes, Sir.

Q. When did the interviews at which that occurred take place? A. I cannot state the times.

Q. What? A. I cannot; I don't remember the time—nearly always when he would come in, he would ask me if I had seen Elizabeth.

Q. Yes; he always expressed interest in regard to her condition, did he? Yes, Sir.

#### MR. BEECHER'S MESSAGES TO MRS. TILTON.

Q. And when—you cannot tell us when it was he sent any messages? A. I cannot tell you of any particular time.

Q. That he always sent messages. A. He sent messages a number of times.

Q. Well, when was the first time that you can tell us, that he sent a message? A. I cannot tell the first time.

Q. Was it after this long interview that you talk about, or before? A. Well, it must have been before.

Q. Before that—but you cannot say whether it was in 1871 or 1872? A. No, Sir.

Q. Or the early part of 1873. Now, where did any interview

occur in which he sent any messages by you to Mrs. Tilton, and how did it come about? A. He always asked me to bear his love to her.

Q. He what? A. To take his love to her.

Q. Do you say always? A. I think, nearly always sent his love to her.

Q. Well? A. Wanted me to find out if there was anything she was in need of, any luxury, any little comforts she needed; if so to let him know, and after I had repeated to him a conversation I had had with Mrs. Tilton, when she felt that she could not live with Mr. Tilton any longer, and was going to live with her mother, he told me expressly to see her and say to her from him, that for his sake, if not for her own, she must remain with Mr. Tilton; she must be to him a good and true wife; to make his home as happy as she could.

Q. When was this? A. I don't know when it was. It was when I repeated to him a conversation which I had with Mrs. Tilton.

Q. Cannot you give us any idea when this was? A. I cannot, no, Sir.

Q. What year? A. No, Sir.

Q. Well, that is what you mean by the messages that were sent to her? A. Yes, Sir.

Q. And any other messages that you remember, except of this nature or its equivalent? A. Well, he always told me to say to her that she must refuse to talk with everybody of anything bearing on this case. While she was trying very hard to restore the damage she had done by a confession, she was all the time making it worse.

Q. Anything more? A. No. Mr. Beecher's messages to Mrs. Tilton were always kind—kind and affectionate, that is all.

Q. That is all? A. And an interest for—that she should have everything that she needed; she should be comfortable; that she must keep up a good heart and be hopeful and courageous, and good to Mr. Tilton.

Q. Are you unable to give us any clew to this time when Mrs. Tilton, as you say, was thinking about leaving her husband and living with her mother? A. I don't remember the time.

Q. Now, after receiving this note which I have shown you, which is dated June 1st, 1873—isn't it Mr. Fullerton?

Mr. Fullerton—I think it has no date, only that it was delivered at the same time with the note to Mr. Moulton.

Q. Yes, fixed at that time. Have you said that you had a conversation with him the Monday after that? A. Yes, Sir.

Q. What day of the week was this, June 1st? A. The 2d of June, I think it was; on Monday.

Q. You say it was the Monday after that you had a conversation. How are you able to fix the day and the date? A. I remember the letter distinctly. Mr. Moulton read the letter to me on Sunday.

Q. Well, was the 1st of June Sunday—you mean the next day? A. Yes, Sir.

Q. Well, the next day—now Mr. Beecher called the next day, did he? A. Yes, Sir.

Q. Did he call to see Mr. Moulton or you? A. He called to see me.

Q. And Mr. Moulton not there? A. Mr. Moulton was in when he called; when he first came to the house.

Q. Yes, and what passed between Mr. Beecher and Mr. Moulton and you, while your husband was—

Mr. Beach—That is the same thing you have just gone over.

Mr. Evarts—Is this the one?

Mr. Beach—Why, certainly.

Q. Now, this, I think, is the last conversation then, that you have given, with Mr. Beecher? A. 1873.

Q. Yes? A. No, Sir, it was not the last that I had with him.

Q. Which later one have you given? A. The last conversation that I had with Mr. Beecher was on the 13th of July—last July.

Q. 1874? A. Yes, Sir.

Q. Between this 2d of June, 1873, and this 13th of July, 1874, there was no interview between you and Mr. Beecher, of any information, was there? A. On one occasion when he met me in the hall, and told me—thanked me for my sympathy, and said that I was the best friend that he had, that I was dearer to him than any sister that he had.

Q. That you have spoken of in your direct examination, also? A. Yes, Sir.

Q. This visit on the 13th of July was not made to you, was it, by Mr. Beecher? A. No, Sir.

Q. It was made to your husband? A. Yes, Sir.

Q. Were you present at the whole of the interview between your husband and Mr. Beecher? A. I left the room when my husband entered. I don't know anything at all about the interview.

Q. Then your conversation was with Mr. Beecher before your husband came? A. Yes, Sir.

Q. Now, where was your conversation with Mr. Beecher on that occasion—held in what room? A. In the study at the top of the house, the upper floor of our house.

Q. Was Mr. Moulton in the house? A. Yes, Sir.

Q. And what delayed his coming? A. He was preparing to go before the Committee on that evening.

Q. Then this was in the evening, was it? A. It was towards evening. It was not dark. It was in June—or in July.

Q. Well, did you go up to the study to see Mr. Beecher?

A. I asked Mr. Beecher to come up with me in the study.

Q. Was Mr. Moulton there? A. No, Sir.

Q. How long a time passed before Mr. Moulton came up?

A. Perhaps ten or fifteen minutes.

Q. And whatever conversation you had with Mr. Beecher, was in that ten or fifteen minutes? A. Yes, Sir.

Q. On that occasion, I mean? A. I had another conversation with him when he came down stairs, but the conversation lasted fifteen minutes in that room.

Q. Now, how did that conversation come about? A. Mr. Moulton came—

Q. I am talking about what occurred only between you and Mr. Beecher. What occurred there?

Mr. Beach—You asked how the conversation came about.

Mr. Evarts—Well, how did it pass along? A. I think my first word to Mr. Beecher was: "Frank is very angry with you.

What have you done?" He said: "Nothing that I know of. What is he angry about?" I said: "He is angry because you called your Committee." He said: "I didn't call the Committee. My people called the Committee. I could not object to an investigation." I said: "Why did you do it without consulting Frank?" And he said: "I don't consider that Frank has anything whatever to do with my church affairs. I have intrusted myself to Frank wholly and entirely throughout this whole case, and I have oftentimes been governed by him when it was against my better judgment to do so, and while I have trusted implicitly in Frank, in this case I think he has nothing whatever to do."

Q. Did you say anything further? A. Frank, I think, then came into the room, and I went down-stairs.

Q. And that was all that happened before? A. As near as I can remember that was all.

Q. Then, after your husband and Mr. Beecher had an interview, in which you were not present, did anything further pass between you and Mr. Beecher, and where, and how? A. As Mr. Beecher came down the stairs, I called to him in the front room, second story, and said that I would like to speak to him. He came into the room, and Mr. Moulton came in with him, and as they entered the room Mr. Moulton says: "Well, then, Mr. Beecher, you think my statement before the Committee an honorable one." He said: "Perfectly so." After a few words more of conversation, which I don't remember—not any of importance—Mr. Moulton left the room and went down stairs, and was then going down to the Committee at Plymouth Church. After he had left the room I said: "Mr. Beecher, do you know what Mr. Tilton has promised in *The Eagle* of to-night?" He said: "No, I do not." I said: "He has promised to give to the public a statement of the facts in this case in ten days. If he publishes that statement it will ruin you." He said: "I think not;" but I said: "He will publish your letter of confession." He said: "I have never made any confession in writing." I said: "That letter given to Mr. Moulton in confidence." "Well," he said, "if that letter is published it is a breach of confidence on the part of Frank, if he publishes that letter." I said: "I don't know anything about that. I only know that if that statement is published, you will be ruined." He said: "Very well, let them come on, and do their worst; they cannot convict me." I said: "But, if Mr. Tilton fails in this, he is going to take his case into the courts." Says he: "He hasn't any case to take into the court. He has condoned his wife's offense, and lived with her for four years; he hasn't any case." And I said: "Well, I don't know anything about that; I only know what he proposes to do. He says he can no longer endure what he has been suffering; that he is losing—he has lost—he is suffering, and his paper is suffering, and he cannot endure it any longer, and he is determined to publish the facts, to tell the truth." And then I said: "Now, you see, Mr. Beecher, how much better it would have been for you if you had taken my advice in the beginning, and made a confession to your church, and then you would have only the original sin to answer for, and now you have four years' of lying and per-



jury to answer for." He said: "I will never confess it. I will die before I will make a confession."

Q. By your original advice did you mean the advice that you had given him on the 2d of June, 1873? A. Yes, Sir; my advice from the first to the last was that he should make a confession, and if not—

Q. Well, I have asked you a question, if you mean the advice you gave him? A. Yes, Sir, I do.

Q. Not as to any additional advice. Now, all this that you stated to Mr. Beecher on that occasion of Mr. Tilton's intentions—how did you come to know anything about them? A. Why, I had read the card in *The Eagle*.

#### WHEN THE PRESENT SUIT WAS PROPOSED.

Q. Was there anything in the card in *The Eagle* about Mr. Tilton bringing a suit at law? A. No, Sir.

Q. How then had you learned all the things that you told Mr. Beecher then? A. Because I had heard Mr. Tilton say that he would take his case into the courts of justice, where he would be fairly dealt with.

Q. You had heard that? A. I had heard him make that remark in general conversation.

Q. At that time? A. It must have been about that time.

Q. It must have been before this, if you said this to Mr. Beecher. A. Well, perhaps it was the day, or a few days before; I don't remember how long before.

Q. Can't you give us any information as to how long before this you had heard from Mr. Tilton that he was going to have a suit at law with Mr. Beecher? A. It was not very long before.

Q. Well, was it six weeks before? A. I think the first that I heard was about the time of the Bacon letter.

Q. Then as early as the Bacon letter you had heard— A. I am not sure it was as early as that.

Q. That is your best impression? A. I don't remember how soon it was, but I remember that Mr. Tilton made that remark.

Q. And you had that opinion, that he intended to have a suit at law? A. I knew that he proposed to state the truth.

Q. Well, I have asked you about the suit at law. You told Mr. Beecher— A. I certainly did.

Q. About the suit at law. Now, you think you heard that from Mr. Tilton as early as the Bacon letter? A. I am not sure that I did.

Q. Isn't it your best recollection that you did? A. I cannot say that it is; I don't know when he first spoke of it.

Q. Why did you refer to the Bacon letter as a period, if you had no recollection connecting it with that period? A. Well, because at the time of the Bacon letter Mr. Tilton was very much wrought up by the criticisms of the newspapers and of Mr. Beecher's friends. I think it was quite likely at that time, still I cannot say positively when it was.

Q. Well, if it was not at that time do you remember any other time that it was? A. No, Sir.

Q. Now, this communication, Mrs. Moulton, that you made to Mr. Beecher on this last occasion concerning which you have

spoken—did you do that by the request of any one? A. No, Sir.

Q. Did your husband know that you were going to do it? A. No, Sir.

#### THE TRACY INTERVIEW AT MR. MOULTON'S.

Q. Mrs. Moulton, can you give us any information as to the days—the Sundays in December, when Mr. Tilton or Mr. Tracy were at your house—December, 1872, when Mr. Tilton or Mr. Tracy were at your house? A. I don't remember meeting Mr. Tracy—of knowing him personally at that time?

Q. In December, 1872? A. I don't remember that I met him.

Q. You don't remember seeing him there then? A. I think he was at the house.

Q. You cannot tell us, then, on what Sunday in December Mr. Tracy was there? A. I don't remember in 1872.

Q. Now, have you any means of telling us on what Sundays in December, 1872, Mr. Tilton was at your house? A. I know he was there so much of the time that I do not remember—

Q. How? A. I do not remember any particular time.

Q. You cannot fix that date. Mrs. Moulton, perhaps you will remember a Sunday when Mr. Tilton, Mr. Tracy, Mr. Woodruff, and your husband were at tea at your house together. Do you remember that occasion? A. As early as 1872?

Q. December, 1872. A. I remember that Mr. Tracy, and Mr. Woodruff, and Mr. Moulton were in consultation, but I do not remember of meeting him at tea.

Q. Well, you remember an occasion when they were all there? A. I do not remember about the tea; I don't think I was present.

Q. You do remember the occasion on which they were all there? A. I remember they were there.

Q. Yes, together. Now, can you tell us what Sunday in December that was? A. No, Sir.

Q. Now, Mrs. Moulton, when did you first understand that you were to be a witness in this case? A. I think in July, 1874.

Q. Of last year? A. Yes, Sir.

Q. And ever since that time have intended to be a witness? A. If I was called—yes, Sir.

Q. If you were called; and you date that period and time of being a witness from the publication of Mr. Beecher's defense, or whatever it is called—his statement? A. I do not know that it dates particularly from that statement of Mr. Beecher's.

Q. I thought you said heretofore that that was so? A. Well, I can only say that since July, I learned that I was to be a witness.

Q. What? A. Since July I learned that I was to be a witness in the case.

Q. Do you mean before the Church? A. No, Sir, I have never been spoken to in regard to the Church.

Q. Before the Church Committee? A. No, Sir,

Q. Well, what suit was there in July that you could be a witness in? A. Should the case come to trial, I should be a witness.

Q. Were you expecting to be a witness before the Church

Committee, or only in a law suit, if there should be one? A. I didn't expect to be a witness before the Committee.

Q. Where were you in July of last year? A. The only time I was absent from the city I spent in Narragansett.

Q. Well, was not that in July? A. I forget the time that I went to the country.

Q. Were not you absent in July at Narragansett? A. I think a portion of July, yes, Sir.

Q. What part of July? A. It must have been after the 13th. I don't know how soon after. I think I went to the country about the 26th of July, I am not sure.

Q. Was it before you went to Narragansett, or after, that you understood that you were to be a witness? A. I presume it was before.

Mr. Evarts—It has reached the usual hour, Sir, and I shall not be able to conclude to-day.

#### AN ADJOURNMENT TILL TUESDAY.

Mr. Fullerton—If your Honor please, what conclusion did your Honor arrive at, in respect to Monday, whether there is to be a Court or not?

Judge Neilson—I wish to learn of the counsel what the law is on that subject. They are generally advising us about the law.

Mr. Evarts.—The conclusion I have come to, is that the statute makes it a legal holiday, a *dies non*.

Judge Neilson—My impression is that way, arising mainly from the fact that the statute provides that the sheriff's office shall be closed, and the clerk's office shall be closed. It is difficult to conceive how you can have a court without a clerk's office.

Mr. Fullerton—Well, we shall take no exception to your Honor's ruling on that point.

Judge Neilson—Then we adjourn until Tuesday morning at eleven o'clock. Is that the understanding?

Mr. Evarts—Yes, Sir. Mr. Beach, do you agree to that?

Mr. Beach—I agree to that.

Judge Neilson—It may be a benefit to the jurors. I hope I may have the pleasure of seeing them here Tuesday morning, improved by the air and exercise in the meantime. Get ready to retire, gentlemen. Meet us here on Tuesday at 11 o'clock.

The Court then adjourned until Tuesday, February 23, at 11 a. m.

## THIRTY-FIRST DAY'S PROCEEDINGS.

### THE PLAINTIFF'S COUNSEL REST THEIR CASE.

MRS. MOULTON EXPLAINS WHY SHE KISSED MR. BEECHER—HER EXAMINATION CONCLUDED—CATHARINE CAREY'S LIFE AS A SERVANT—SHE ADMITS HAVING BEEN INTOXICATED—THE PLAINTIFF TO INTRODUCE A LARGE AMOUNT OF REBUT-TAL TESTIMONY.

TUESDAY, Feb. 23, 1875.

Mr. Evarts, to-day, resumed his cross-examination of Mrs. Moulton. After a few scattered queries regarding Mrs. Woodhull's visits to Mrs. Moulton and the interviews described by the witness, the cross-examination ended. The redirect examination was more interesting, Mrs. Moulton being called upon to say why she kissed Mr. Beecher at the memorable interview of June, 1873. She said that Mr. Beecher was crying and she was crying, and she never expected to see him again. Mr. Evarts interrupted here, and objected to hearing anything further regarding this act, and Mr. Fullerton desisted. The exact language of Mrs. Moulton in advising her husband, in 1874, to make a short statement to the Plymouth Investigating Committee, as stated by her, was, "Give the old man another chance;" the irrepressible audience greeted these words with laughter, calling forth a severe reprimand from Judge Neilson. Soon afterward Mrs. Moulton was excused, and stepped from the witness chair.

Mr. Evarts and Mr. Fullerton now both arose to their feet to address the Court, and considerable amusement was caused by the two men, who for a moment stood smiling and bowing each other to proceed. Mr. Fullerton gracefully withdrew at last, and his opponent went on to say that the defense would call the witness, Catharine Carey, for further cross-examination. Mr. Fullerton was upon his feet in an instant in a very different attitude, and in one voice he and Mr. Beach cried, "We rest our case! We rest! She can't be called on our side." The minor issue regarding Mrs. Carey was forgotten in the murmurs of astonishment that followed the words of the plaintiff's lawyers. There was an excited look on the face of every spectator, and the counsel for Mr. Beecher did not disguise their surprise.

Mr. Evarts went on, however, as if there had been no interruption, and the result was that Mrs. Carey again took the witness-chair, paler



and more emaciated than before, but as self-possessed and clear in her answers as at her former appearance. Her life for years back was examined after she gave her testimony last week, and it was discovered that her real name is Smith. She insisted to-day that on her first examination she gave that name, which belonged to her husband, who deserted her several years ago. It was also ferreted out that the woman had been fond of liquor, but if the counsel expected that she would give a denial of that fact they were disappointed, for when asked if she knew why she was discharged from a certain family in Brooklyn, she quickly answered, "Yes, Sir; intoxicated." Evidently appreciating her inferiority in point of education, the witness apologized to Mr. Evarts on one occasion, after having given a curious jumble of words, saying that she did not know how to pronounce like "high-floven people."

The plaintiff's lawyers had no questions to ask the witness, and she left the stand. An earnest whispered consultation between five of Mr. Beecher's counsel followed, and at its close Mr. Evarts walked up to the bench and privately informed Judge Neilson that he found that Mr. Tracy, who had been selected to open for the defense, was not ready to proceed, but if possible the opening would be made in the afternoon. It being within a few minutes of one o'clock, the court adjourned for recess. Immediately after the interval, Mr. Evarts announced that counsel for the defense had not supposed that the plaintiff's case would rest until night, and that Mr. Tracy was therefore not ready, and could not begin. He asked an adjournment to Feb. 24. Mr. Beach responded that to allow the adjournment under the circumstances was only a proper courtesy, and he therefore concurred in Mr. Evarts's request. The audience was then dismissed.

## THE PROCEEDINGS—VERBATIM.

### MRS. MOULTON'S MEMORY ASSAILED.

The Court met at 11 a.m., pursuant to adjournment. Mrs. Emma C. Moulton was recalled and the cross-examination resumed.

Mr. Evarts—Mrs. Moulton, you said on your direct examination that you went to Mrs. Woodhull's and "brought her to my house three or four times?" A. Yes, Sir.

Q. Can you give any particulars of a fourth visit to your house? A. I don't remember; no, Sir.

Q. Did you bring her four times to your house? A. I remember distinctly three times; I don't remember any more.

Q. You remember three times that you brought her? A. Yes, Sir.

Q. Now, I understood you to say that those three visits that you remember were once with Mr. Tilton, once with your mother-in-law, and once with your son? A. Yes, Sir.

Q. And I understand you to say that when you went with Mr. Tilton you did not bring her to your house? A. I don't remember that I said that I did not—that I did or did not bring her.

Q. Did you bring her to your house? A. I think not.

Q. You think not? A. I think not.

Q. I understood you so before? A. Yes, Sir; I think I did not bring her.

Q. Now, there are but two visits, then, that you brought her to your house? A. Two that I remember. Yes, Sir.

Q. Were you then mistaken in thinking that you had brought her three or four times to your house? A. I remember distinctly twice that I brought her to the house. I remember visiting her once with Mr. Tilton at her house.

Q. And not bringing her to your house on that occasion? A. I think I did not bring her.

Q. Can't you remember whether you did or did not? A. I don't remember positively.

Q. What? A. I don't remember, but I remember twice distinctly that I brought her.

Q. The time that you went with Mr. Tilton, do you or do you not remember whether you brought her to your house? A. I think not.

Q. Is that all you can say; have you no recollection definitely about it? A. I don't remember positively whether I brought her or not.

Q. What time in the evening did you start on that errand with Mr. Tilton? A. I don't remember the time.

Q. Do you remember nothing about the time? A. I don't remember the time; no, Sir.

Q. What? A. I don't remember positively the time.

Q. Can you give us nothing about the hour of the day that you started? A. I don't remember.

Q. Do you remember the hour of the day that you got back? A. No, Sir.

Q. Have you no recollection about the hour of the day that you returned? A. No, Sir.

Q. How many hours were you absent from your house? A. I remember that we made only a short call on Mrs. Woodhull. I don't know how long it takes to go to her house and return.

Q. You have been several times; don't you know about how long it takes to go and return? A. No, Sir; I could not tell you the exact time.

Q. All these visits were made in a carriage, were they not? A. Yes, Sir.

Q. Now, Madam, how happened you to say on your examination, that your boy was eleven or twelve years old when he went with you? A. I did not remember exactly how long it was since I went with him.

Q. Then perhaps it was last year, wasn't it? A. Oh! no, Sir, it was not last year.

Q. He was twelve a year ago, wasn't he? A. Yes, Sir.

Q. And eleven two years ago? A. Yes, Sir.

Q. Now, did you go last year? A. No, Sir.

Q. Did you go the year before? A. I went the year of the publication of her story; I don't know what year that was.

Q. Did you go in the year 1873? A. I can only tell you that I went the year that she published her story in the paper; I don't know what year.

Q. Can you tell me, Madam, whether you went with Mr. —whether you went to that house in the year 1873? A. I cannot answer the question, what year it was.

Q. Do you mean you cannot remember whether you were there in the year 1873? A. I mean that I do not remember the year that I was there.

Q. And do not remember that you were not there in the year 1873? A. I don't remember.

Q. Well, now, were you there in the year 1872? A. I don't know the year.

Q. Were all your visits in the same year? A. I think so.

Q. That you don't remember? A. I think they were.

Q. Do you mean by that that they were in the same year by the calendar, or within a space of a year? A. I don't remember positively, but I think they were within a year; I don't remember.

Q. Have you a pretty good memory? A. Yes, Sir, I think so.

Q. Have you given us the best of your recollection about these visits to Mrs. Woodhull? A. I have; yes, Sir.

Q. And you can give us nothing more? A. No, Sir.

Q. Have you an impression that you went there a fourth time? A. I don't remember only of the three visits that I have told you.

Q. And you cannot give the hour of the day or evening that you went, or the hour of the day or evening that you returned either visit? A. I don't remember; no, Sir.

Q. What? A. I don't remember the hour; no, Sir.

Q. Nor anywhere near the hour? A. No, Sir; I can't tell you.

Q. Would not a trip in a hackney coach in the night time and back impress itself on your mind, if it had taken place? A. I don't know whether it would.

Q. Are you quite sure that both of the other times than that in which Mr. Tilton accompanied you you did bring this lady to your house? A. Yes, Sir; I am quite sure. My little boy remembers coming back with me.

Q. I don't ask you about what your boy remembers? A. Well, I have stated to you what I knew about it.

Q. Well, you are quite sure? A. I am quite sure.

Q. That you brought her both the other times? A. Yes, Sir.

Q. Now, are you sure whether you took her back both of those times? A. I am not sure; I don't remember of taking her back.

Q. You don't remember whether you did or not, do you? A. I don't remember positively; no, Sir.

Q. Whether you took her back or not? A. I think I did not.

Q. And you can give us no idea of the hours of the evening that you started or got back? A. No, Sir.

#### MRS. MOULTON'S SERVICES AS MESSENGER.

Q. Did you go on any other errands in connection with this business? A. To Mrs. Woodhull?

Q. No; to anybody. A. I don't remember.

Q. What? A. I don't remember of any at present.

Q. Did you go by your husband's or Mr. Tilton's request, or with either of them, anywhere else on any errands connected with this matter? A. I don't remember any.

Q. Are you quite sure that you did not? A. I don't remember any other.

#### THE STORY TOLD GEORGE C. ROBINSON.

Q. Mr. George C. Robinson, of whom you have spoken as the party to a conversation with you—he is your uncle, is he not? A. Yes, Sir.

Q. One of the firm of Woodruff & Robinson? A. Yes, Sir.

Q. And not the gentleman who has been examined as a witness here? A. No, Sir; a brother.

Q. His name is Jeremiah P.? A. Yes, Sir.

Q. They are brothers, are they not? A. Yes, Sir.

Q. And they are both your uncles? A. Yes, Sir.

Q. Are they the heads of this mercantile house with which your husband has been connected? A. Yes, Sir, Mr. Jeremiah Robinson is the senior partner.

Q. And Mr. George C. is next to him, is he not? A. I really don't know.

Q. The other partners are younger men, are they not, whoever they may be? A. Yes, Sir.

Q. When was that conversation with Mr. George C. Robinson? A. I cannot state the exact date. I cannot give you the date, or perhaps the year, but it was in the beginning of this trouble.

Q. The beginning of the trouble? A. Yes, Sir.

Q. Then it was in the year 1871, was it not? A. I don't know, Sir.

Q. Don't you know when this trouble, as you call it, began? A. Yes, Sir.

Q. What? A. Yes, Sir.

Q. Well, when did it begin? A. In 1871.

Q. Well, was your conversation with Mr. Robinson in 1871? A. It might have been some time during that year.

Q. It might have been; when was it? A. I cannot state; I cannot give you the date.

Q. Don't you know that it was in the Spring of that year; before the Summer? A. I don't know, Sir, when it was.

Q. Don't you know that it was in the Fall; after Summer? A. I do not; no.

Q. Don't you know whether it was in 1871 or 1872? A. I think it was in 1871; but I cannot say positively.

Q. And not later than the Fall, you think, of 1871? A. I don't know, Sir, what time it was.

#### THE INTERVIEW WITH MRS. TILTON.

Q. You have described an interview you had with Mrs. Tilton, in which you were a good deal affected and wept; you have stated that you did not have that interview by the request of Mr. Tilton or your husband? A. Yes, Sir; I stated so.



Q. That is so; did you report to them that conversation after you had it? A. I think I reported it to Mr. Moulton.

Q. Have you any assurance in your memory that you did that? A. I do not remember—

Q. Don't remember? A. —at present, positively; but I think I did.

Q. It is not impressed upon your mind, then, what you did upon that point; do I so understand you? A. I think I reported it, but I cannot say positively.

#### WHAT PROVOKED MRS. MOULTON'S REBUKE TO MR. TILTON.

Q. Can't say positively. Now, Madame, in this conversation with Mr. Tilton in which you called him a villain, and told him if he turned on your husband, even by a look, you would—

Judge Neilson—I don't think she adopted the word "villain."

Mr. Beach—No, Sir.

Mr. Evarts—I so understand it.

Mr. Fullerton—Well, it is a mistake.

Mr. Evarts—I think not; I will read the record.

Judge Neilson—She answers something of that kind; I did not understand she adopted that very word.

Mr. Evarts—I do not wish to hold any witness to anything that has not been said.

Judge Neilson—Of course not.

Mr. Evarts—I wish to understand this lady.

Judge Neilson—Yes, Sir.

Mr. Evarts—[Reading]:

Do you remember an interview that you had with Mr. Tilton, at your house, during some of these years; in January, 1873, do you remember having an interview with Mr. Tilton, at your house, in which you told him that he was a villain and would betray your husband as he had Mr. Beecher? A. I think I remember an interview with Mr. Tilton something like that.

The Witness—In seventy—last Summer.

Q. When? A. I stated last Summer, that I had such an interview.

Mr. Evarts—Perhaps it is.

Judge Neilson—That is as I recollect it, Sir.

Mr. Evarts—I will read on, your Honor. [Reading]:

Do you remember when that was? A. Yes, Sir; it was last July.

Q. Do you remember, on his making some remark in answer to this statement of yours, that you threatened to send for a policeman and have him put out of the house? A. No, Sir; I never remember the policeman nor any reference to any policeman.

Q. What did you further tell him? A. I said if he was unkind to Frank, my husband, if he turned on him in any way, even so much as by a look, that he must never come into our house again.

Judge Neilson—Well, it is not material; your question pointed to the interview.

Mr. Evarts—It did, and pointed to the language, and she discarded from it nothing but the policeman.

Mr. Beach—That is a mistake.

Mr. Evarts—I have read the record.

Mr. Beach—Well, you misconstrue it.

Mr. Evarts—It may be, but you do—one or the other.

Mr. Fullerton—And it is not us.

Mr. Beach—Then it is for the Court to settle it.

Mr. Evarts—It is not for the Court to settle. It is for the jury to settle, when we sum up.

Judge Neilson—Put your question, Sir.

Mr. Evarts—You had a conversation with him, a part of which was, that if he turned upon your husband even by a look—what led you to think of his turning upon your husband? A. I remember, it was in August this conversation took place; it was with reference to Mr. Moulton having failed to make his statement before the Committee as he had promised. At my earnest solicitation a short statement was prepared for Mr. Moulton and given to the Committee in place of the long statement, as I said, to give Mr. Beecher another chance to state his case fairly. Mr. Tilton did not know of that; he had been out of town. When he came home in the evening he came into our house with Judge Morris, and said: "Frank, you have broken your faith with the public; your reputation will suffer; you have promised faithfully to give to-day to the Committee your statement; you have failed to do it." I listened to him for some time; I was sitting in the back room, and I did not like the manner or the way in which he reproved Frank for having failed to make his statement, and I went in and spoke to him. My exact language I do not remember; I know that I was very angry, and reproved him very severely for speaking to Mr. Moulton in the way in which he did.

Q. Well, did you call him a villain? A. I may have called him a villain.

#### MRS. MOULTON'S TRIP TO NARRAGANSETT.

Q. Mrs. Moulton, can you give me more accurately when you went to Narragansett in last July? A. I forget the day of the month, but some time in July; I think it must have been the latter part of July.

Q. Do you remember any part of the month that you were at Narragansett and how long you were there? A. I think, in all, during the entire Summer, I was there about six weeks, for I went the latter part of July.

Q. Didn't you go as early as the 17th of July? A. I do not think that I did; I do not remember the day of the month.

Q. Do you remember whether or no while you were there you were sick? A. Yes, Sir.

Q. Do you remember what part of the month of July, if in the month of July, that was? A. I was sick nearly all the time.

Q. Well, do you remember your husband coming there, after you had been there some time; that is a week or more, or some period of time, and that that was in July that he came? A. I remember his coming there while I was there; yes, Sir.

Q. Well, do you remember whether that was the 24th day of July that he came? A. I do not remember the day of the month?

Q. Do you remember how long you had been there when he came, whenever that was? A. I cannot tell you; no, Sir.

Q. Don't know? A. I do not know how long I had been there; no, Sir.

MR BEECHER NEVER PRONOUNCED INNOCENT BY  
MRS. MOULTON.

Q. Do you remember meeting a Mrs. Dennis at Newport? A. Yes, Sir.

Q. In the years 1873 and '74; was she an acquaintance of yours? A. Yes, Sir, she is a relative of mine.

Q. Is she a Brooklyn lady? A. No, Sir; she lives in Newport.

Q. Lives in Newport—an acquaintance of yours there? A. Yes, Sir.

Q. Did you see her in both years—1873 and '74? A. I think I did; yes, Sir.

Q. Now, do you remember telling her that Mr. Beecher was an innocent and good man? A. No, Sir; I never told her that.

Q. Quite sure of that? A. Sure that I never told her any such thing.

Q. Do you remember to have told other persons that? A. I have never told anybody Mr. Beecher was an innocent man.

Q. You have never told Mrs. Dennis that Mr. Beecher was an innocent and good man? A. I never told her that he was an innocent man.

Q. Well, nothing to that effect, that he was an innocent and good man? A. I never said to anybody that he was an innocent man.

Mr. Evarts [after consultation]—If your Honor please, that is all I have to ask.

#### RE-DIRECT EXAMINATION OF MRS. MOULTON.

The re-direct examination was then begun by Mr. Fullerton, as follows:

Q. Can you state more particularly when you made known to Mr. George C. Robinson what you told him? A. I cannot; I do not understand your question, Sir.

Q. You have told us what you communicated to Mr. George C. Robinson? A. Yes, Sir.

Q. In respect to Mr. Beecher when he questioned you as to what was the difficulty? A. Yes, Sir.

Q. What led Mr. Beecher to visit your husband so often—can you give us more particularly when that conversation took place between yourself and Mr. Robinson?

Mr. Evarts—That is just what I have been asking.

The Witness—It was. I do not remember whether it was in the first year, but I think it must have been. Mr. Robinson was very much exercised about the stories that were—

Mr. Evarts—No matter about Mr. Robinson.

Mr. Fullerton—Was it after your husband received these frequent visits from Mr. Beecher? A. Certainly.

Q. And how long had that been going on, as near as you can remember? A. I cannot tell you how long. I only know that Mr. Beecher had been frequently to the office, and had excited the suspicion of Mr. Robinson.

Q. Then, whenever it was, it was after that? A. Yes, Sir.

Q. Now, was Mr. George C. Robinson a member of Plymouth Church? A. Yes, Sir.

Q. How long had he been a member? A. I forget the year, but before I joined the church.

Q. And had he held an office in the church? A. He had been deacon; yes, Sir.

#### MRS. WOODHULL'S LAST CALL AT THE MOULTONS.

Q. Mrs. Moulton, you have stated in your cross-examination, speaking of your visit to Mrs. Woodhull's house, that Mr. Moulton wanted you to go, and Mr. Tilton wanted you to go and see Mrs. Woodhull in reference to something in the case, I don't know what. A. It was in reference to the publication of the—of her story.

Q. Of her story? A. Yes, Sir.

Q. Now, were those visits after this threat of Mrs. Woodhull, which appeared in one of the New York papers, to publish the story? A. Yes, Sir.

Q. You never had any intercourse with Mrs. Woodhull after that? A. No, Sir; not at all.

Q. And was it after the threat and before the publication of the story itself? A. Yes, Sir.

Q. Did you ever see Mrs. Woodhull after the publication of the story? A. The last time that I saw Mrs. Woodhull she came to our house to ask Mr. Moulton if he could assist her in raising some money; she said she had a library or a set of books which she could give as security. Mr. Moulton was sick at the time, and told her that he could not assist her in any way; she left the house very angry—the last time that I saw her.

Q. That is the last time that you saw her? A. That is the last time that I saw her.

Q. When was that? A. I don't remember the time when it was. I only remember it was the last visit.

Q. Was it after the publication of the story? A. Yes, Sir.

Q. That visit you did not anticipate? A. No, Sir.

Q. And how long was she at your house? A. Only for a short time; perhaps half an hour.

#### THE BEECHER-TILTON-WOODHULL DINNER AT THE MOULTONS.

A. You have mentioned an occasion when Mr. Beecher was at your house to dinner; can you tell us when that was? A. I think it must have been in the year 1871, for the reason—I have only one way of knowing—when we were dining in our basement, and I think it was in 1871, but I cannot give you the exact date.

Q. You cannot be positive? A. No, Sir.

Q. Now, was Mrs. Woodhull there at dinner? A. Yes, Sir.

Q. Was it before or after Mrs. Woodhull had threatened to publish her story? A. It was after.

Q. It was after? A. Yes, Sir.

Q. Then, if that threat was published in 1872, the dinner was after that? A. Yes, Sir.

Q. Do you recollect at what hour the dinner was served? A. In the evening; at evening.

Q. Do you recollect who arrived first, Mr. Beecher or Mrs. Woodhull? A. I don't—no, Sir.

Q. Do you recollect where they first met? A. I don't remember.



Q. Or do you recollect how long they arrived at the house before the dinner was served? A. No, Sir; I cannot tell you anything about the particulars.

Q. You were asked how early you learned you were to be a witness in this case. Can you fix the time any more definitely when you did learn that? A. I think it was in July.

Q. Why do you think it was in July?

Judge Neilson—[To Mr. Fullerton.] It was not exactly "a witness in this case," but "a witness."

#### THE COUNSEL'S WIT IN PLAY.

Mr. Fullerton—Well, Sir, the language of the counsel upon the other side in framing the question is as follows—

Judge Neilson—I think it was in an anticipated case—some case.

Mr. Evarts—Not the case before the Court.

Mr. Fullerton—I don't know that it was an anticipated suit. That is what I am trying to get at.

Judge Neilson—You have an impression it was an individual suit he brought.

Mr. Fullerton—I asked her if she could fix the time, but she could not, and, therefore, I wish to pursue the inquiry.

Mr. Evarts—I don't know.

Mr. Fullerton—That is the reason I am trying to inform you.

Mr. Evarts—She has been very certain in regard to it.

Mr. Fullerton—She has not been very certain in regard to it.

Mr. Evarts—We won't dispute with one another.

Mr. Fullerton—I won't dispute if you don't.

Mr. Evarts—Then I won't dispute if you do.

Mr. Fullerton—That is very judicious, but I am going to find out, notwithstanding that, when it was that this took place.

Judge Neilson—Go on.

#### WHO FIRST SUGGESTED THAT MRS. MOULTON SHOULD BE A WITNESS.

Q. Do you know whether it was before or after this suit that we are now trying was actually commenced? A. I don't think the case had commenced.

Q. Was it talked of? A. I heard Mr. Tilton one day, in conversation, say something with reference to the suit being brought into the Court.

Q. Who was it spoke to you first about being a witness? A. I don't remember who; I think Mr. Moulton.

Q. And what did he say? A. He said that with my knowledge of the case, and of the facts from Mr. Beecher himself, I should have to go before the Court, of course—would be called as a witness.

Q. Was that all there was of it? A. Yes, Sir.

#### HOW MRS. MOULTON CAME TO KISS MR. BEECHER.

Q. You have been asked, Mrs. Moulton, a question in reference to the kissing of Mr. Beecher, and you stated that you leaned over and kissed him on his forehead, and that was the only time you ever kissed him. I want you to state under what circumstances that was done?

Mr. Evarts—She has already stated that before.

Mr. Fullerton—Well, we will have it restated.

The Witness—As I have told you, Mr. Beecher came to the house suffering greatly, very despondent and gloomy at his knowledge, or at least his fear, that Mr. Tilton was about to publish that letter of apology; if so, he felt the truth would come out and he felt that he could not any longer try to live up—try to bear up under it, and he came to see me to have a long talk with me. He was lying on the sofa—

Q. You need not repeat the whole conversation, Mrs. Moulton. I only want to know what the condition of his mind was at that time, in general terms? A. I can only tell you the evening that Mr. Moulton came home, I said to him—

Mr. Evarts—No matter what you told Mr. Moulton.

Mr. Fullerton—You may state, in the first place, what was the condition of Mr. Beecher in respect to mental anguish and suffering at that time, and your own condition? A. His condition was such that I said to Mr. Moulton I felt as if I had been in the presence of death.

Mr. Evarts—I must object to that.

Judge Neilson—[To the witness.] It is not evidence what you said to your husband.

Mr. Evarts—That is struck out, I suppose, your Honor.

Judge Neilson—Yes, Sir.

Mr. Fullerton—How did you feel in regard to what you told your husband? A. I felt as if I had been in the presence of death, and, as I expressed it to a friend, I felt as if I had been to a funeral.

Mr. Evarts—No matter about that.

Mr. Fullerton—Leave out about your friend. You can tell your own feelings without telling you expressed them. I want to know the circumstances under which you kissed him on the forehead. A. He was crying and I was crying at the time I kissed him on the forehead. I never expected to see Mr. Beecher again, or at least only a few moments, as he told me he would come on the next day. We had a long interview. Mr. Beecher was suffering greatly. I cannot describe to you any more accurately than I have done the interview.

Mr. Evarts—We don't want an argument.

Mr. Fullerton—No, I don't suppose you do want an argument, nevertheless we want the evidence. If that is an argument we cannot help it.

Q. Did you expect at that time that he would take his life? A. I certainly did.

Q. You have been asked whether you did not say to him, at that time, that if there ever was a good man you believed he was one. You did not state what you did say to him at that time. Do you recollect what you did say to him? A. I tried to dissuade him from committing suicide, and I said to him: "You have committed this sin, but you say you have repented, and you believe you have been forgiven. I still think there is much good in you, and I think it is your duty to confess your crime and try and do some good in the world yet."

Q. What was your object that day in what you said and in what you did to Mr. Beecher?

Mr. Evarts—I object to that.

Judge Neilson—I think that is fair.

Mr. Evarts—We have three times had what she said and did.

If she had another object than that indicated, why, she can state it, perhaps.

Mr. Fullerton—It is apparent, but there is no objection to making it more so and emphasizing it.

Mr. Evarts—We will judge.

Mr. Fullerton—And we will judge by her motives also.

Mr. Evarts—Not in the least.

Mr. Fullerton—We shall. You may do what you like about it. It is proper for this lady to state what her object and motives were on that day, during that long and painful interview with her pastor.

Judge Neilson—I think the object and motives are quite apparent on the face of the testimony given, and although that would be a proper question on the cross-examination, yet this is your witness.

Mr. Fullerton—Yes, Sir; but she has been turned over to us for a re-direct examination. They attempted to place this lady in a false attitude, although they have failed very signally in their attempt, I think; yet it is proper for me to follow that object up and show not only the circumstances under which this act was committed, but the object she had in view in committing it.

Judge Neilson—That is quite apparent.

Mr. Fullerton—Does your Honor hold it is improper?

Judge Neilson—I think we have it sufficiently, but it may not be improper. Nobody could mistake the spirit or the motive of this lady at that time on the statement she has made.

Mr. Fullerton—I am satisfied with that. [To the witness.] You have been asked also, Mrs. Moulton, whether you did not on one occasion, in the presence of your husband, put your hand upon his shoulder and neck and say to him, "Take care of this good man," speaking with reference to Mr. Beecher. Do you recollect having such an interview, and, if so, state what occurred? A. I remember on one Friday evening Mr. Beecher came into our house, and he was very much depressed and suffering greatly, and Frank called me into the room with reference to some matter—I forget what it was—but I remember putting my hand on Mr. Beecher's shoulder and saying to Frank, "Take care of this man," or "this good man."

Q. You believed at that time, did you not, that Mr. Beecher had repented? A. I believed so; yes, Sir.

Q. You thought he truly repented? A. Yes, Sir.

Mr. Evarts—That he had what?

Mr. Fullerton—That he had repented.

Q. One other question I omitted, Mrs. Moulton. Did you repeat to your husband the interview you had with Mr. Beecher—the long interview I refer to, of three or four hours? A. I did; yes, Sir.

Q. And did you state to him that you had kissed Mr. Beecher on the forehead? A. I did; yes, Sir.

Q. And when did you make that statement to your husband? A. It was the evening when he returned—the evening when he came back.

#### MR. HALLIDAY'S CALL AT THE MOULTONS.

Q. Your attention has been called to an interview with Mr. Halliday. Do you recollect when that took place? A.

I don't remember; I remember the conversation with Mr. Halliday.

Q. Do you recollect what that conversation was? A. I think I said to Mr. Halliday, "I wonder why Mrs. Woodhull should have used my name;" but I said nothing to Mr. Halliday about Mr. Beecher's guilt or innocence.

Q. Was the conversation after the publication of the Woodhull story? A. Yes, Sir.

Q. What questions did Mr. Halliday put to you at that time? A. I don't remember what his questions were; I only remember that I avoided having any conversation with Mr. Halliday with reference to Mr. Beecher.

Q. Did you feel at liberty to tell him what you knew in regard to the matter? A. No, Sir; I did not.

#### MR. TILTON'S REFUGE FROM HIS TROUBLES.

Q. When did Mr. Tilton commence taking his meals at your house? A. He used to visit us frequently in Clinton-st.

Q. When did he take his meals there with any degree of regularity, with reference to December, 1870; was it before or after? A. It was before. It was in 1869, I think.

Q. 1869? A. I think so—1869 and 1870. He has been so much at our house, I don't remember the last time when he began to come.

Q. Did he commence to take his meals there until after the domestic difficulty? A. No, Sir.

Q. Can you state whether it was before or after July, 1870? A. It was afterwards.

Q. Now, did he give any reason to you why he took his meals there?

Mr. Evarts—That I object to. I don't see what this conversation has to do with it.

Judge Neilson—I think not.

Mr. Fullerton—Why, Sir, it is a declaration accompanying the act. Is that not a very familiar principle of law?

Judge Neilson—It would be if you had a specific act in hand.

Mr. Fullerton—The act is very specific; it is taking his meals at the house.

Judge Neilson—Taking meals is a very general thing, and over many months.

Mr. Fullerton—Yes, Sir.

Judge Neilson—If you can single any one occasion, and a declaration forming part of that occasion, doubtless you can give it.

Mr. Fullerton—Your Honor will remember that this habit of his grew up after the domestic difficulty. The date of that was July 3, 1870. They have given that in evidence for a purpose, and they will use it hereafter before this case is closed. Now, it ought to be competent for us to show what Mr. Tilton said at the time as characterizing the act.

Judge Neilson—What he said on any specific occasion I think might be given, but not general occasions.

Mr. Evarts—Your Honor will remember your ruling against us in regard to Mr. Bell. We offered to show an act of Mr. Beecher in calling Mr. Bell into conversation, and what he said



to Mr. Beecher, and what Mr. Beecher said to Mr. Bell, and you excluded it.

Mr. Fullerton—The objection was twofold as to that. First, it was a part of the defense which they had no right to interject into our case.

Mr. Evarts—That was not the ground.

Mr. Fullerton—It was one of the grounds distinctly stated by myself.

Judge Neilson—I think we cannot take this.

Mr. Fullerton—Do you recollect when Mr. Tilton first came to your house to take his meals after this domestic difficulty? Did he give any reason for not taking them there before?

Mr. Evarts—The same objection.

Judge Neilson—The same ruling.

Mr. Fullerton—I thought that was in harmony with your Honor's suggestion. I am willing to accommodate, of course. [To the witness.] In one of the gentleman's questions put to you on Friday last he used the word "treachery," in asking you what you said with reference to Mr. Tilton. Did you ever, in any conversation with your husband, speak of Mr. Tilton as treacherous, or as likely to be treacherous towards your husband? A. No, Sir; I do not remember that I used the word "treacherous" to him.

#### MRS. TILTON AS A WOMAN'S RIGHTS ZEALOT.

Q. Now, as to these woman's suffrage meetings at your house, to which your attention has been called, do you recollect to what extent, if any, Mrs. Tilton participated in that Woman's Rights movement? A. I remember her inviting me to take some office in the association, to become a member of it. I remember that she has a number of times been invited to our house to meet them, on one or two occasions, when Mrs. Stanton and Miss Anthony were there; those are all that I remember.

Q. Did she meet the ladies you mention at your house? —Mrs. Stanton and Miss Anthony? A. I do not remember that she did.

Q. How? A. I think not.

#### MRS. MOULTON'S TALK WITH MR. McLEAN.

Q. Do you recollect the conversation with Mr. McLean, to which your attention was called? A. Yes, Sir.

Q. When was that conversation? A. I do not remember the time. He was waiting in our parlor for Mr. Moulton.

Q. Were you acquainted with Mr. McLean at the time? A. I think I had been introduced to him; I do not remember positively, but I think Mr. Moulton had introduced me to him on one occasion.

Q. How long had he been there before Mr. Moulton came in? A. Perhaps fifteen or twenty minutes.

Q. Did he not interrogate you in regard to what you knew about the case? A. No, Sir; I do not remember that there was anything said about the case; he spoke of Mr. Beecher's portrait.

Q. Was there anything said about the domestic difficulty? A. No, Sir.

Q. Or about Mr. Beecher, other than the conversation about his portrait? A. No, Sir.

Q. When did you make Miss Emily Faithful's acquaintance? A. I think in 1873 she was here; I forget just how long ago.

Q. How long did she spend at your house? A. She was at our house six weeks.

Q. Do you know where she is now? A. She is in London.

Q. Did you converse with her in regard to this case? A. Only in a general way.

#### MR. MOULTON'S FIRST STATEMENT.

Q. Now, give us the date, if you please, when this short statement of your husband was the subject of conversation between him and Mr. Beecher? A. In 1873.

Q. In July, was it not? A. In 1873.

Q. Yes. A. Yes, Sir.

Q. 1874, I should say. A. 1874? Do you mean last Summer?

Q. The last statement—the first statement that your husband prepared to make. A. It was in July.

Q. Repeat again, if you please, what it was that Mr. Beecher said in reply to the questions put by your husband? A. Mr. Moulton said to Mr. Beecher, "Then, Mr. Beecher, you consider my statement an honorable one to make before the Committee?" He said, "Yes, Frank, I consider it so, perfectly."

Q. Did you see that statement? A. No, Sir; I do not remember that I saw it.

Q. Did they have it with them at the time of the conversation? A. Mr. Moulton had it. He had read it to Mr. Beecher in the study.

#### MR. TILTON WITHOUT FAITH IN THE COMMITTEE.

Q. You have stated on your cross-examination that Mr. Tilton said he would take his case into Court. What else did he say on that occasion? A. I do not know.

Q. Do you recollect what else he said on that subject? A. He said he would take his case into Court, where he could be vindicated and have justice.

Q. What was he complaining of, if anything, at the time?

Mr. Evarts—She has not said he complained of anything.

Mr. Fullerton—That is the reason I ask the question.

The Witness—Of the unfairness of the Committee.

Q. What did he say, if anything, on that subject?

Judge Neilson—In that connection?

Mr. Fullerton—Yes, Sir.

The Witness—Of the unjustness of the Committee.

Q. Of what Committee? A. Of the Church Committee.

Q. Did he say in what respect they had done him injustice?

A. That it was a packed Committee, and that he had not any chance of stating his case at all.

#### WHY MRS. MOULTON ADVISED A SHORT STATEMENT.

Q. Mrs. Moulton, you say that you advised a short statement on one occasion? A. Yes, Sir.

Q. When was that? A. It was at the time Mr. Moulton had proposed his statement to the church. There were a number of gentlemen invited to meet General Butler at our house—Mr. Kingsley, Frank Woodruff, Mr. Moulton's father, and a number

of other gentlemen were present. I was also present in the room, and I asked General Butler if there was to be a statement prepared—

Q. You need not state the conversation; but why did you advise the short statement? A. Because I asked—

Mr. Evarts—I object.

The Witness—him to give Mr. Beecher another chance.

Mr. Evarts—One moment; I object.

Judge Neilson—It appeared on your cross-examination that she advised the short statement.

Mr. Fullerton [To Mr. Evarts]: Yes, that was at the close of your cross-examination that morning. It came out on your examination.

Judge Neilson [To Mr. Fullerton]: Your question seeks to account for that—how she came to do that.

Mr. Fullerton—Yes, Sir.

Judge Neilson—If you are certain of the fact that he called it out.

Mr. Fullerton—I made a memorandum of it at the time.

Mr. Evarts—I don't know what she said, nor it didn't impress itself on my mind. I didn't ask for it.

Mr. Fullerton—The gentleman got it, however.

Mr. Evarts—What did I get? Let it be read.

Mr. Fullerton—I am willing you should do that. I don't know that it was in answer to a question that necessarily called for it, but it was in answer to a question, and whether there is anything in the answer here that contains that, they have a right to it.

Judge Neilson—Let us see what the statement is.

[THE TRIBUNE stenographer, who reported the testimony referred to, being absent from Court writing out his notes for publication, an unofficial stenographer read from his long-hand manuscript the part called for.]

Mr. Fullerton—She stated she suggested they should make a short statement.

Judge Neilson—Now put your question.

Q. Why did you make that suggestion, or give that advice?

Mr. Evarts—It is not any inquiry I made. It is only about fixing a time. She had reference, I am told by my associate, to about the time of the statement. If she referred to the month of July that would not give her a right to tell all that happened in the month of June.

Mr. Fullerton—No; I don't claim that at all, but I do claim that inasmuch as whatever language she did use upon that subject was in reply to questions put by counsel upon the other side, that I have a right to follow it up and show what purpose she had in view in making that suggestion.

Mr. Evarts—I think your Honor sees that it is clearly inadmissible, whatever was the statement. I asked the witness the date of something that she had testified to, and she undertakes to fix the date by its being the time when some statement was made by somebody or other, it being one of the facts, I suppose, understood to exist in this case. It did not answer my purpose; my purpose was to ascertain the time.

Judge Neilson—I thought the object was to get at the time.

Mr. Evarts—But the witness saying that it was the time when

a certain statement was made does not entitle counsel to show what the conversation was.

Mr. Beach—It is distinctly in evidence now from this lady that she counseled that a short statement should be made for the purpose of giving Mr. Beecher an opportunity to clear or relieve himself. That is now expressly in evidence.

Judge Neilson—Then we have the object.

Mr. Fullerton—But not in full.

Judge Neilson—Then ask her what further she said.

Mr. Evarts—I object to that. This answer of the witness was made in answer to a question of mine, to give us the date of something that she had testified to. Now your Honor is asked to allow the conversation which took place at that time.

Judge Neilson—Let the question and answer be read.

The stenographer read as follows:

Q. You had a conversation with him, a part of which was, that if he turned upon your husband, even by a look—what led you to think of his turning upon your husband? A. I remember that it was in August that this conversation took place. It was in reference to Mr. Moulton having failed to make his statement before the Committee as he had promised. At my earnest solicitation a short statement was prepared for Mr. Moulton to give to the Committee in place of the long statement—as I understood to give to Mr. Beecher another chance to state his case fairly.

Mr. Fullerton—Now, your Honor knows perfectly well that when my learned friend upon the other side puts a question to the witness, and gets an answer that is not responsive, or does not suit him, he moves forthwith to strike it out, and does not rest until it is stricken out. But, on the other hand, if he puts a question to a witness and gets an answer which is not responsive, but which he deems of some advantage to himself, he then fails to make such a motion and lets it stand, perhaps, until some future time in the case when we, by a question, seek to take advantage of the answer, and then the argument is that it is irresponsible, and that we have no right to follow up the answer. Now, when counsel puts a question and gets an answer, and does not move to strike it out, but permits that answer to stand as evidence, then it is evidence, and we have a right to explain it if it needs any explanation. The question we now put is—why she advised or suggested this short statement.

Judge Neilson—She may answer that.

Mr. Evarts—Note my exception to the question. Why she did it is inadmissible.

Mr. Fullerton—The question is, why did you advise or suggest that a short statement be made at that time by your husband? A. In order to give Mr. Beecher another chance to set before his Church and the Committee the truth.

Q. And what did you state at the time that you gave the advice as to the short statement?

Mr. Evarts—She does not state that she stated anything.

Mr. Fullerton—That is the reason I ask the question.

The Witness—I did not want Frank to state the facts wanted Mr. Beecher to do it.

Mr. Evarts—I object to that answer.

Mr. Fullerton—What words did you employ at that in as nearly as you can recollect? A. I said, "Give the another chance." [Laughter.]



Judge Neilson—You had better wait until to-morrow, and then you may have something more exciting.

MRS. MOULTON'S CONVERSATION WITH MRS. DENNIS.

Mr. Fullerton—Where did you make the acquaintance of Mrs. Dennis? A. I have known her all my life.

Q. Does she reside in Brooklyn? A. No, Sir; she lives at Newport, Rhode Island.

Q. When was this conversation that you had with her? A. I do not know whether in 1872 or 1873. I have seen her nearly every year. I visit Newport every Summer.

Q. Was this case talked about? A. Yes, Sir; discussed in a general way.

Q. Did you go into any particulars as to what you knew in regard to it? A. No, Sir.

Q. Did you feel at liberty to communicate to Mrs. Dennis or to any one else the facts that you knew? A. No, Sir.

Mr. Fullerton—That is all.

RE-CROSS-EXAMINATION OF MRS. MOULTON.

Mr. Evarts—Mrs. Moulton, are you quite sure that you told your husband of this interview with Mr. Beecher on the evening of the day on which it occurred? A. Do you mean when I kissed Mr. Beecher on the forehead?

Mr. Evarts—Yes.

The Witness—Yes, Sir.

Q. What impressed it on your mind that you told him on the evening of the day that it occurred? A. Because it caused me great sorrow. The interview through which I had passed with Mr. Beecher made a very great impression upon my mind, as I then really thought that he was going to take his life.

Mr. Evarts—No matter what you thought.

Mr. Fullerton—That is the very reason. She is perfectly right in her answer.

Mr. Evarts—My suggestion is, what makes you sure that you told him that night? A. Because it made such an impression upon my mind.

Q. You cannot be mistaken about that? A. No, Sir.

Q. You remember the evening, and you remember your husband returning that evening, do you? A. Yes, Sir.

KATE CAREY RECALLED BY THE DEFENSE.

Mr. Evarts—That is all Mrs. Moulton. If your Honor please, we have brought Mrs. Kate Carey here for further cross-examination.

Judge Neilson—Mrs. Moulton can retire, can she?

Mr. Fullerton—Yes.

Judge Neilson—Mr. Evarts, is your witness in attendance?

Mr. Evarts—Yes, Sir.

Mr. Beach—Is the control of this case to be taken out of our hands?

Judge Neilson—The counsel has a right to reserve, until you get through, the further cross-examination of the witness.

PLAINTIFF'S COUNSEL REST THEIR CASE.

Mr. Beach—Certainly Sir. We rest now.

Mr. Evarts—I called this witness for cross-examination, as a part of your case.

Mr. Beach—No, Sir; not as a part of our case. We have rested our case.

Mr. Evarts—I gave you notice that I was going to cross-examine the woman.

Judge Neilson—Bring the woman here and then we will see what rights you have.

Mr. Beach—There is no necessity for any point of this kind, for we shall take no objection to their further cross-examination of this lady, for the purposes, I suppose, of contradiction, or for any other purpose.

Mr. Evarts—That we understand; and we understand that we have a right to do it now.

Mr. Beach—I submit that you have not a right to do it now, still we make no particular point. We have rested our case, but if the gentlemen wish to call the witness they may do it; but the gentleman had no right to interfere with our case, while we were conducting it for the purpose of examining or cross-examining any witness except the witness on the stand, and we had a right to rest when we were through.

Judge Neilson—And I am very glad you did so. Bring the witness.

Mr. Evarts—I have a right so to do, and gave notice since this witness was on the stand that I should call her here for further cross-examination.

MRS. CAREY AGAIN CROSS-EXAMINED.

Mrs. Kate Carey then took the witness chair.

Judge Neilson—You remember, madam, that you were sworn the other day?

The Witness—Yes, Sir.

Judge Neilson—You will consider the binding force of that oath as still continuing. They propose to ask you a few more questions.

Mr. Evarts—I think you said, madam, that you were married or had been married? A. I am a widow lady, Sir.

Q. What was your husband's name? A. John Smith, Sir.

Q. When did he die? A. That I cannot say, Sir.

Q. When did you last see him? A. About three months before my babe was born.

Q. Where were you married? A. I was married in Manchester, England.

Q. When? A. That I cannot say.

Q. How long before your babe was born were you married? A. I am in this country for some years, and I was married coming to this country.

Q. How many years had you been married to this John Smith? A. I was married nine months before I came to this country.

Q. When did you come to this country? A. I came to this country at the time of the Burdell murder at Mrs. Cunningham's.

Q. When was this baby born—this babe of yours? I understand you to mean the babe with the milk for whom you went

to Mrs. Tilton's. A. I cannot say what time it was born. It was born in the Summer, but I cannot tell exactly the day or date.

Q. You mean the birth of the child with the breast of whose milk you went to Mrs. Tilton's, do you? A. Yes, Sir.

Q. Very well; was that your first child? A. It was not, Sir.

Q. How happens it that you do not know when your husband, John Smith, died? A. I do not know. I heard that he had died with yellow fever. He was not a very good help to me. He went away before the babe was born.

Q. When you have lived in these places of which you have spoken have you lived by the name of Kate Carey? A. Kate Carey and Kate Smith—both names. I went always as a widow woman.

Q. By "both names" do you mean the two names at the same time? A. I went for Kate Smith in most of the places, but I told the servant girls that my name was Carey.

Q. You went sometimes by the name of Kate Smith, and sometimes by the name of Kate Carey? A. I always went as Smith.

Q. Always went by the name of Smith? A. Yes, Sir.

Q. And did you go to Mrs. Tilton by the name of Smith. A. Yes, Sir.

Q. Why did you give your name as Kate Carey in this cause, when you were called as a witness? A. I gave both names.

Mr. Morris—She gave it as Kate Carey Smith.

Mr. Evarts—I did not hear anything about it.

Mr. Morris—That is the way she gave it.

Mr. Evarts—Is it so down?

Mr. Morris—I do not know, but that is the way she gave her name when she was sworn, and the officer so gave the name when the oath was administered.

Mr. Evarts—Did you live with Mr. Robert T. Moore, at 110 Smith-st., in this city? A. Yes, Sir.

Q. How long did you live there? A. I lived there until they broke up housekeeping.

Q. How long was that? A. I do not know whether it was two months or going on to three. I cannot say.

Q. But about that time? A. Yes, Sir.

Q. Do you remember the cause for which you were discharged from that place? A. From Mr. Moore's?

Q. Yes. A. They gave up housekeeping and went to boarding.

Q. Then you were not discharged for any cause or conduct of your own? A. No, Sir.

Q. Were you not discharged from that place for intemperance? A. No, Sir.

Q. That is your recollection, is it? A. That is my recollection, Sir.

Q. Do you remember telling Mr. Moore, while there, that you never saw anything wrong between Mr. Beecher and Mrs. Tilton? A. The name never was mentioned at Moore's.

Q. You are quite sure of that? A. I am sure of it, Sir.

Q. You did not say anything of that kind? A. I did not, Sir.

Q. You have spoken of having lived in Clinton-st. with a family by the name of Duryea or Duryee? A. Deray, Sir.

Q. Do you know how the name is spelled? A. I do not, Sir; I do not know the number on the door.

Q. While you lived at this house of Deray did you know a man by the name of Webster, who lived in the neighborhood? A. I did not.

Q. A painter, or a mechanic of some kind? A. No, Sir.

Q. Nor talk with him? A. I did not, Sir.

Q. Did you live at Mrs. Gilchison's in Brooklyn? A. I did, Sir.

Q. In what street? A. Right across from the doctor's at the corner of Montague-st.

Q. How long did you live there? A. That was a little while after I left Mrs. Tilton.

Q. How long did you live there? A. A month, Sir; about a month.

Mr. Fullerton—That is all in evidence already.

Mr. Evarts—Were you discharged from that place? A. There was sickness in the house. They lost a little girl named Annie; she had a fever and I took sick there and the milk went through my system, and I was not able for all the work.

Q. Were you discharged from that house for intemperance? A. No, Sir.

Q. Nor for any cause except your sickness? A. Nothing as I know, Sir.

Q. Did you ever live at Mr. H. L. Rider's—a lawyer in Willow-st., Brooklyn? A. Not as I know it, Sir; I do not remember.

Q. Don't you know whether you lived there or not? A. No, Sir; I do not remember living in Willow-st.

Q. Did you never live in Willow-st.? A. No, Sir; not as I know of.

Q. And never lived with Mr. Rider? A. No, Sir.

Q. Don't you remember bringing to Mrs. Rider some certificates of character, from somebody on Staten Island? A. No, Sir.

Q. You don't remember that? A. No, Sir; I had no certificates from Staten Island.

Q. Did you present any? A. No, Sir.

Q. You do not remember, then, being discharged from Mr. Rider's? A. No, Sir.

Q. Do you remember saying, at this house of Mr. Rider's, that you had nursed Mrs. Tilton—Mrs. Theodore Tilton—and that you spoke of her as a lovely woman, and a perfect lady? A. I do not remember living at such a name in Willow street.

Q. Nor anywhere else? A. No, Sir.

Q. You do not remember saying that at Mrs. Rider's house? A. No, Sir.

Q. Did you live with a Mrs. Heinrichs or Heinrichs in Clinton street? A. Heinrichs in Clinton street? I do not remember living with anybody but the DeBucks in Clinton street; not DeBucks, but the family you spoke of near Second place.

Q. I asked you if you lived with Mrs. Heinrichs in Clinton street. A. I do not know; I do not remember.

Q. Did you live with a German family? A. Oh, yes; I did. Their business was the fancy business; I believe it was over in Maiden lane, New-York.



Q. Was their name Heinrichs? A. I believe it was. I am not positive.

Q. How long did you live there? A. I think it was a month.

Q. Do you remember why you were discharged from there? A. Yes, sir; intoxicated. [Laughter.]

Q. Did you live or lodge at a house kept by a Mrs. Keys or Kays, at No. 261 Pacific street? A. No, Sir.

Q. That is a servants' boarding house, is it not, or don't you know? A. I know nothing of the person; I never visited there.

Q. And never boarded there? A. No, Sir.

Q. Don't you remember lodging at the house of Mrs. Keys, or of boarding with Mrs. Keys? A. Oh! yes, Sir; I did—facing Mr. Moore's grocery store.

Q. I don't know what it faces. You did live there? A. Yes, I did; I remember.

Q. You do remember it now? A. Yes, Sir; I do remember.

Q. Where is that? A. That is facing Mr. Moore's grocery store.

Q. Where is Mr. Moore's grocery store? A. At the corner of Pacific and Smith streets.

Q. You do remember that? A. Yes, I do remember.

Q. How long were you at that lodging house? A. I was not there more than a week at a time; the quicker I got to service the better.

Q. Do you remember of being sent away from that lodging house for drunkenness? A. Not at all, Sir; never. She was able to drink as much as I was. [Laughter.]

Q. Perhaps not when you were there? A. Well—she drank her share—if I would pay for it—like all the lodging women.

#### THE WITNESS'S CHARACTER.

Q. Now, madam, I understand you to have said before that you have not lived out for a year—something of that kind? A. Not steady.

Q. What? A. Not to say steady in a place. I have been poorly about that length of time.

Q. What—boarding? A. Poorly; I haven't been very well.

Q. Well, I understood you to say that you had not lived out as servant for a year; is that so? A. It is about this time twelve months that I left Brooklyn to go over, and I haven't done anything much since.

Q. Now, do you remember living with a Mr. Motley at Harlem? A. I do, Sir.

Q. How many months did you live there? A. Going on my second month, Sir.

Q. How? A. Going on the second month.

Q. And when was that? A. I was about a month and, I think, two weeks or three weeks. I didn't put in the two months.

Q. Well, when? A. In the Summer; last.

Q. Last Summer? A. I think so.

Q. Wasn't it within four months from now that you lived there? A. It was about there, I guess; about that time; it was in warm weather.

Q. Do you think you lived there about four months, do you mean? A. No, Sir; I did not.

Q. Was it four months ago that you left there? A. I could not say, Sir.

Q. Where did you go to from there? A. I went to the office, and I got a place in two miles past Harlem, in a family named Simpson.

Q. After leaving Motley's? A. After leaving Motley's.

Q. How long did you live at Simpson's? A. I lived at Simpson's about a week, when I was taken with a sore throat.

Q. How long ago did you leave Simpson? A. That is the length of time that I left Simpson's to go to Bellevue Hospital, sick.

Q. And you have been there ever since? A. Yes, Sir.

Q. Now, can you give us again, if you gave it before, the date that you went to the hospital? A. Well, all I can say, Sir, is I was there eight weeks before Christmas, and a week before Christmas I went out and got a situation. I lived one month, and got a severe cold and came back to the hospital, and I am there going on three weeks.

Q. Since? A. Since, Sir.

Q. Where was this place that you got after Simpson's? A. In Irving-place; the English Jew family.

Q. That is the one you spoke of before? A. Yes, Sir.

Q. Now, about Motley's; do you remember being discharged from Motley's? A. I do, Sir.

Q. What was that for? A. 'Toxicated.

Q. Anything else? A. Nothing else as I know it, Sir.

Q. Wasn't it in regard to lying also that you were sent off from there? A. No, Sir.

Q. Nothing of the kind? A. Nothing of the kind.

Q. Nothing but intoxication? A. Nothing but 'toxicated. I told her I wasn't "tight," and I was "tight." [Laughter.]

Q. Oh, well! And you were sent off, any how? A. Yes, Sir.

Q. Now, who is your doctor, that treats you at this hospital? A. Drs. Schaefer and Knox.

Q. And they have treated you, have they, from the beginning? A. Yes, Sir; very good, indeed.

Q. Yes; no doubt of that. Now, do you say that these doctors have told you that you have bronchitis? A. Yes, Sir; a severe cold.

Q. And bronchitis? A. Yes, Sir.

Q. And you think that is the disorder for which you have been treated there, do you? A. Yes, Sir.

Q. And the doctors have told you so, have they? A. Well, I heard it from other doctors; some years ago I had brownkeetoes.

Q. Oh! I dare say. The question is, what you have got now. Have these doctors at Bellevue Hospital told you that they were treating you for bronchitis or "brownkeetoes," as you call it? A. No, Sir; they didn't say it, but I heard it from other doctors. I asked doctors, and they said it was a severe cold.

Q. Some years ago? A. Some years ago; and I heard it from other doctors that I had brownkeetoes.

Q. But you have not heard it from these doctors at Bellevue? A. I have not, Sir.

Q. Now, have you heard from these doctors at Bellevue what disease you were being treated for? A. No, Sir.

Q. Not at all? A. No, Sir.

Q. And you don't know, unless it is bronchitis? A. No.

Q. What? A. I do not, Sir; but my throat got sore, and I have often had it so before, but not as bad as it has been this time, and I thought of course it was brownkeatoes, but they have gave me medicine for severe cold.

Q. Now, madam, do you know a person named George Wilson? A. I do not, Sir.

Q. A barkeeper, or something of that kind, in a hotel in New-York? A. No, Sir.

Q. You don't know him? A. No, Sir.

Q. Don't you remember meeting him at the Pacify Hotel, or Pacific Hotel in the Bowery? A. I don't recollect any such name, or such a man. I don't visit such places, hotels or restaurants, or any place else.

Q. You don't remember, then, going there with him or being there with him? A. No, Sir.

Q. Do I understand you that you do not remember being at this hotel in the Bowery with this Mr. George Wilson? A. Never, Sir. I don't know the person, and I never was in a hotel.

Q. I don't mean to live in the hotel. A. I never was in a hotel in my life, Sir; not in the city.

Q. Now, won't you tell us who this charitable lady was that spoke to you at Bellevue Hospital. A. Mrs. Lyons.

Q. Lyons? A. Yes, Sir.

Q. And where does she live? A. That I don't know, Sir. I know nothing about her, only she visits the poor.

Q. Had you known her before? A. I never seen her in my life, Sir, or spoken to her.

Q. Did she profess to be from Brooklyn? A. She didn't say, Sir, where she was from.

Q. Now, what did she say to you about getting a place for you? A. She told me, "Kate, if you were ready I would get you a fine place in Brooklyn." Well, says I, "When I am ready, I think I can get a place myself." She said: "Did you ever live in Brooklyn?" Says I: "Yes." Says she: "Who did you live with?" and I up and told her that I lived with Mr. Theodore Tilton as a wet nurse. She asked me what to make of this trouble, and I told her I didn't know, nor neither I didn't.

Q. To make of what? A. To make of this trouble—this talking; I don't know.

Q. Then did you tell her what you repeated here the other day? A. I believe I did, Sir.

Q. As near as may be in the same way you told it to her? A. Yes, Sir.

Q. And then what did she say to you? A. She says: "Well, if any person comes to you, Kate, would you be timid in telling the truth?" Says I: "Of course I will not be."

Q. Would what? A. Would I be timid in telling the truth, and I says: "No, madame, I won't."

Q. Do you see that lady in her visits there now? A. No, Sir.

Q. She does not come now? A. I have not seen her.

Q. Has she been there since she had this talk with you? A. I don't know, Sir.

Q. Had she been there before? A. Several times, Sir.

Q. Before? A. Oh! I have not spoken to her before.

Q. You never spoke to her before? A. No, Sir.

Q. Had you ever seen her there before making charitable visits? A. I have, Sir.

Q. How did you know they were charitable visits if she didn't speak to you? A. She had parcels under her arm, such as underclothes and stockings, giving to the poor.

Q. Can you give us any information by which we can find this woman? A. I cannot, Sir; I don't know anything about her.

Mr. Fullerton—I will give you her letter in a moment.

Q. She has not been there since? A. Not as I can say.

Q. Do you know John Rooney? A. Yes, Sir.

Q. Is he in the hospital? A. I believe he is, Sir.

Q. How long have you known him? A. A very short time, Sir.

Q. Did he remove your trunk for you from one place to another? A. Yes, Sir.

Q. From where to where? A. He removed it from Mrs. Dwyer's to Mr. Lawler's.

Q. Do you know now whether this Mr. George Wilson was an acquaintance of Mr. Rooney's or not? A. I don't know anything about it, Sir; I don't know the person.

Q. Or John Wilson? A. I don't know such a person.

Q. Neither of them. Now, do you remember saying to a Mr. George Wilson or a Mr. John Wilson while you were in his company, that you never saw anything wrong between Mr. Beecher and Mrs. Tilton? A. I don't know the persons. I have never spoke to the person about anything.

Q. But that you could come and say that you saw something, and could secure a good place for yourself? A. I have never pronounced them words, Sir.

Q. Never said anything of that kind? A. I have not, Sir.

Q. To George or John Wilson? A. I have not, Sir.

Q. Or to any man at the Pacify Hotel, or Pacific Hotel? A. No, Sir.

Q. Did you ever go with Mr. Rooney to, or meet Mr. Rooney at No. 15 Bowery? A. No, Sir.

Q. Never been there in his company? A. Never, Sir.

Q. You have spoken of boarding at Mrs. McCaffrey's, haven't you? A. Yes, Sir.

Q. In Fourteenth-st.? A. Yes, Sir.

Q. How long did you board there? A. I have known her about fourteen years, Sir, and I boarded there every once in a while when I would leave a situation, may be a week, two weeks.

Q. Well, do you remember being sent away from that boarding house by this keeper of it, Mrs. McCaffrey? A. No; never, Sir.

Q. You don't remember being sent away? A. Never was sent out of any place where I boarded yet, Sir.

Q. You don't remember being sent away from there for drunkenness? A. I was not, Sir, sent away.

Q. Do you remember that you were not? A. I remember I was not.

Q. What sort of a looking person was this Mrs. Lyons? A. Low sized and white haired, middle aged lady; she was a middle aged lady, low sized.



Q. Do you mean light hair or gray hair? A. Gray hair, Sir.

Q. White from ———? A. From age, I suppose.

Q. Middle sized? A. Yes, Sir.

Q. Now, who did she come to visit at that hospital; who did you see her talking with? A. To all the patients in the ward, Sir.

Q. All in your ward? A. Yes, Sir.

Q. And not to you except this one time? A. She came to me the second time.

Q. The second time? A. Yes, Sir.

Q. Do you mean you saw her the first time talking to everybody but you? A. Yes, Sir.

Q. And the second time she talked to you? A. I called her over, Sir.

Q. Yes; very well. Didn't your husband come with you from England? A. He did, Sir.

Q. And lived with you how many years here? A. He lived with me until the last child was born; three months before that he went down South to some place, but where he went I cannot say; I have not seen tale or tidings of him since. I have not seen him since; that is what I mean to say; I have not seen anything of him since. Of course I am—I can't pronounce my words as these high-flown people.

Q. Well, that is about twenty years since you came over, according to the Burdell murder, I believe. How long ago was it that this Mrs. Lyons came to you at the hospital? A. About a week, I think, before I come over here.

Q. Yes; recently; just before you come over? A. Yes, Sir.

Q. So I understood you before—do you know a woman named Eliza that lives near Lexington-ave. and has her face marked with small-pox? A. No, Sir.

Q. Is she an acquaintance of yours? A. No, Sir.

Q. Not at all? A. I don't know such a person.

Q. Then you have had no conversation with her? A. No, Sir.

Q. On this matter? A. No, Sir.

Q. Can you give us any information about this English Jew family more than you have? A. No, Sir.

Q. You gave that in Irving-place, between what streets? A. I think it is between 16th and 17th streets—about there.

Q. But you cannot give the number? A. It is either 55 or 53, I am not positive—the name I cannot pronounce.

Q. Do you know anything of a Dr. Fullgraft that lives in that neighborhood? A. No, Sir.

Q. Haven't seen him or his sign, or know of his name or— A. No, Sir.

Q. Among the doctors who have treated you at the hospital,

is Dr. Bryan one of them? A. No, Sir.

Mr. Evarts—That is all.

Mr. Fullerton—I have nothing to ask, Sir.

Some consultation here took place between counsel, and between Mr. Evarts and Judge Neilson, after which the Court took a recess until two o'clock.

#### GEN. TRACY TO MAKE THE OPENING ADDRESS FOR THE DEFENSE.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Evarts—If your Honor please, it was in the arrangement of the conduct of this case that the opening should be made by our learned associate, Gen. Tracy, and the calculation in regard to the termination of our adversaries' case, which we had endeavored to make as reasonable as we could, had led us to anticipate the consumption of time by witnesses up to to-morrow night, as probable. Nevertheless, it was in the calculation of Gen. Tracy, that he might be called upon to-morrow. I have endeavored to ascertain, I have ascertained, whether it would be possible for him suitably to his presentation of the case, and for the proper consideration of the Jury and the Court, to proceed in this fragment of the day, this afternoon; and he informs me that it will be quite out of his calculation, and, he thinks, of his ability properly to do so, As I mentioned to your Honor before the recess, I should endeavor to find it possible that we should go on this afternoon; and, as I expressed to your Honor a doubt whether it would be possible, and I now find myself in that position. My learned friend, Mr. Beach, recognizes the situation of the case, and is not disposed to consider it other than reasonable that we should have until to-morrow morning.

Mr. Beach—I can well conceive that it will be an inconvenience to Mr. Tracy to proceed this afternoon, having been somewhat surprised by the suddenness, to him, of the close of our case, and I think it is but a proper indulgence and courtesy to be granted to him to comply with his request.

Judge Neilson [To the Jury]—Prepare to retire, gentlemen.

Mr. Mallison [The Clerk]—Will the audience please remain silent until the adjournment of the Court?

Judge Neilson—[To the Jury.] Please to attend at 11 o'clock to-morrow morning, gentlemen.

Mr. Mallison—The Court stands adjourned until to-morrow morning at 11 o'clock.

The Court thereupon adjourned until Wednesday at 11 o'clock.

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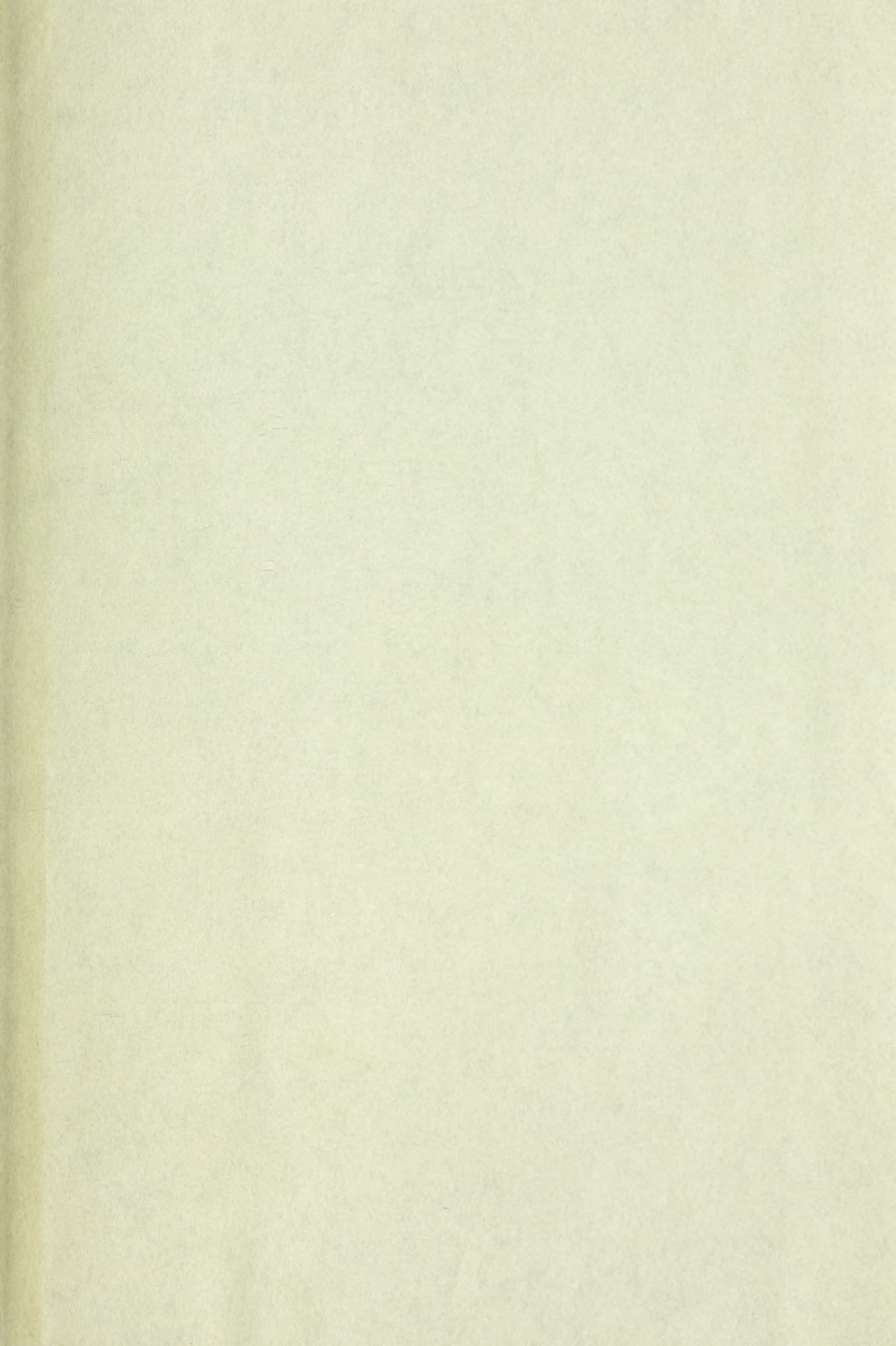
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